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S. Hrg. 100-13

AIRLINE AND RAIL SERVICE PROTECTION ACT OF 1987

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 356

TO PROMOTE SAFETY IN THE OPERATION OF RAILROADS AND AIRCRAFT THROUGH TESTING FOR THE USE, WITHOUT LAWFUL AUTHORIZATION, OF ALCOHOL AND CONTROLLED SUBSTANCES BY THE OPERATORS OF RAILROADS AND AIRCRAFT, AND FOR OTHER PURPOSES

S. 362

TO AMEND THE FEDERAL AVIATION ACT OF 1958 AND THE FEDERAL RAILROAD SAFETY ACT OF 1970 TO PROVIDE FOR TESTING FOR THE USE, WITHOUT LAWFUL AUTHORIZATION, OF ALCOHOL OR CONTROLLED SUBSTANCES BY THE OPERATORS OF AIRCRAFT AND RAILROADS, AND FOR OTHER PURPOSES

FEBRUARY 20, 1987

Printed for the use of the
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AIRLINE AND RAIL PASSENGER PROTECTION ACT OF 1987

FRIDAY, FEBRUARY 20, 1987

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in Room SR-253, Russell Senate Office Building, Hon. Ernest F. Hollings, [chairman of the committee] presiding.

Staff members assigned to this hearing: Steve Palmer and Robert Holleyman, professional staff members; Gerri Hall, Alan Maness, and Patty Hahn, minority professional staff members.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The committee will come to order, please. What we have this morning is the random drug testing bills, my bill S. 362 and Senator Danforth's bill, S. 356. Our hearing today will cover both bills. There is no reason why these bills cannot be merged into a committee bill, perhaps, or otherwise expanded. There is not that great a difference. Some of the members feel that not only aviation and rail operators should be tested, but also operators of buses, public transportation, and trucking. Whether or not it can be worked out realistically is one of the subjects that we have under study today as we hear from our distinguished witnesses.

I would say right here at the outset that any of our witnesses who favor mandatory random drug and alcohol testing of such employees will, at least in my case, be preaching to the converted. Conversely, anyone opposing such a program will find little or no sympathy from this Senator. I am convinced that random testing is the only practical means of preventing drug or alcohol use from being a factor in rail and airline accidents. And that's why I have introduced legislation to require such testing.

It is shameful that we in government need a tragic rail accident such as last month's Amtrak collision in Maryland to wake us up to the fact that such legislation is needed. Sixteen people died in that crash. Scores more were seriously injured. There are strong indications that the cause of the accident was human error. And urinalysis tests performed subsequent to the tragedy showed that the engineer and the brakeman on the freight locomotive which caused the accident had been using marijuana at some point prior to the crash.

That's distressing news indeed.

I don't know if we'll ever determine whether these individuals were high on the drug at the time of the accident. But even if we could, that knowledge will do nothing to bring those 16 people back, nor will it make the critically injured whole.

But what we can do is take our cue from history and do the best we can to ensure that drug or alcohol use will never be a factor in a rail or airline accident in the future. And the only way to do that is to require random drug and alcohol testing of employees responsible for safe operation of trains and planes.

Now I am quite prepared to hear constitutional objections to this approach. They do not sway me in the least.

When we talk about rights, there is a choice that we in government must make. That choice is between the transportation employee's right to privacy and the passenger's right to safe travel. There is absolutely no question as to where our priorities should be.

Airline pilots, air traffic controllers, mechanics, airport security personnel, railroad engineers, railroad maintenance workers—all are directly responsible for the safe conveyance of hundreds of thousands of Americans each day. Individual passengers have absolutely no means of ensuring their own safety for the duration of an airline flight or a train ride. They have no option other than to trust those responsible for the safe operation of the train or plane.

In essence, each transportation employee exercises a public trust. They simply must be held to a higher standard.

The least we can do in the Congress is to provide a good foundation on which to base that trust. Right to the point, if you use illegal drugs or drink alcohol on the job, you have no business operating a train or a plane. You have no business assuming responsibility for all those innocent lives.

Some may call it intimidation. Fine. If we can successfully intimidate safety-related transportation employees from using illegal drugs or drinking alcohol on the job, then I'll feel we've accomplished something beneficial.

There is no question that drug and alcohol use among transportation employees has been a factor in past accidents. The Federal Railroad Administration reports that between 1975 and 1985, drug or alcohol use was responsible for 48 railroad accidents resulting in 37 deaths, 80 injuries, and an estimated $34 million in damage.

Now is the time to put an end to this. The legislation I have proposed amounts to one simple step that would go a long way toward providing our nation with a safer and more reliable transportation network. I am encouraged by the Secretary of Transportation's endorsement of mandatory random drug testing for safety-related employees in her department, and I certainly look forward to her testimony today on my proposal, which would extend that requirement to the private sector.

In sum, we in government have a duty to provide for the safety of our citizens. We are negligent in that duty if we fail to enact the strongest measure possible to prevent drug or alcohol use from being a factor in a rail or airline accident. Let it be known that I will do all I can to see that such legislation moves swiftly through this Committee and through the Congress.

Senator Exon, you chair the Surface Transportation Subcommittee. I would yield to Jim.

OPENING STATEMENT BY SENATOR EXON

Senator Exon. Mr. Chairman, the Surface Transportation Subcommittee had a very interesting and informative meeting on this whole general matter of rail transportation safety earlier this week. We also got into the matter of whether we are going to go into random drug testing for engineers and maybe some of the other operated sections of the railroad. Maybe this would be the time to consider the whole matter of those who fly airplanes, those who drive trucks, and those who drive other public conveyances, such as buses. So we hope to get into that a little bit this morning.

I would like the Secretary's suggestions as to what her views are on this matter. It seems to me that, notwithstanding the many objections that have been raised right now, it is the responsibility of this committee and the executive departments to move very aggressively in this area.

I do not want to interfere with anyone's constitutional rights, nor do I think we want to overlook the rights of the people who put their lives in other people's hands. It seems to me that we must come to some kind of reasonable compromise. I think it can be worked out. I hope we can work together, and I would hope that we would have the cooperation and help of the Secretary as we move forward into this complicated but tremendously important area.

Thank you, Mr. Chairman.

The Chairman. Thank you, Senator.

Senator Pressler.

OPENING STATEMENT BY SENATOR PRESSLER

Senator Pressler. Thank you, Mr. Chairman. I would like to congratulate you for holding this important hearing on Alcohol and Drug Testing Legislation. I am very concerned with the problem of substance abuse and its devastating effects on the safety of our nation's transportation system. I am pleased that we have the opportunity to address this critical issue and I am certain that we will gain much from this morning's hearing.

I realize there is much controversy over the subject of alcohol and drug testing, but we must deal with this issue comprehensively. The safety of our transportation system is at stake. The tragic January 4 Amtrak/Conrail accident called attention not only to the rail industry, but to the need for further study into tranportation safety overall.

There is much discussion regarding constitutional rights when the issue of drug testing is addressed and I would like to briefly comment on this matter. I think we need to state the difference between a "right" and "privilege". In a recent hearing on rail safety, it was noted that although every citizen possess certain rights, not every citizen is entitled to certain privileges, such as driving a car, flying a plane, or running a train. If special testing is required to hold these privileges, then so be it.

Every state is affected by the critical problem of drug and alcohol abuse and I think it's time we forge ahead to end this destructive problem. We can begin by passing legislation which will work to rid us from the acts of a few destroying the futures of many.

Mr. Chairman, let me again congratulate you for holding this extremely important hearing. It is my hope that we will better understand the crucial problems which pose a threat to the safety of our transportation system and work to eliminate alcohol and drug abuse in every conceivable way.

Let me just welcome Secretary Dole and also say that I do support random drug testing for persons who operate not only in railroad but bus, truck, and airlines. I think the public interest in safety would be served. I know there are constitutional problems, but I think there are also public problems.

I think we are at a moment when we can have some action. There is a momentum to this. I have spoken to the Chairman about broadening his bill to include other means of transportation. That is to be determined, but I would certainly support that, and I think we should, rather than just talking about this, we now have a golden moment to pass legislation with some real teeth in it.

The CHAIRMAN. Very good.

Senator PACKWOOD. No statement, Mr. Chairman.

The CHAIRMAN. Senator Stevens.

Senator STEVENS. I am just here to demonstrate my support for the whole concept, Mr. Chairman. I am happy to be with you today. I do believe we should go into a new concept of testing, and I welcome the Secretary's testimony.

The CHAIRMAN. Senator Danforth, the author of this particular bill.

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, I also am happy we are here today and congratulate you on your bill and on scheduling this hearing.

The fact that we are all here this morning to address drug and alcohol abuse in the transportation industry is an indication of the concern that we Commerce Committee members share with the rest of the country. Substance abuse has been found among freight train engineers, airline pilots, air traffic controllers and truck drivers. Although most transportation employees are solid, responsible professionals, it is undeniable that drug and alcohol abuse by a few employees threatens the safety of the traveling public.

Current laws and regulations do not offer adequate protection against those who abuse drugs and alcohol. For example, no drug testing is now required of airline pilots, flight attendants or mechanics. Although Secretary Dole is proposing to require testing of these employees, as well as testing of air traffic controllers, we are uncertain as to the outcome of her proposal. In my view, legislation is required in order to give the Secretary the express authority to require drug testing, including random testing.

The bills which have been introduced by Senator Hollings and myself would give the Secretary a statutory mandate to require testing for drug and alcohol use by employees in the airline industry, as well as air traffic controllers. This legislation also would supplement the current drug and alcohol testing programs in place for the rail industry, to help prevent wrecks like the one that took place in Chase, MD, early this year. In my view, this legislation will provide a much needed deterrent to employees who now quite reasonably can expect not to be caught if they indulge in alcohol or drug abuse.

The legislation, as drafted, covers rail and aviation employees. Another important area we should explore here today is the need for similar action concerning truck and bus drivers. In last year's Commercial Motor Vehicle Safety Act we increased the penalties for driving a truck or bus under the influence of drugs or for using such a vehicle to commit a drug-related felony. We need to explore whether additional testing is needed to enforce these penalties.

Public transportation employees take the lives of thousands of innocent Americans into their hands on a daily basis. Those innocent lives are endangered unless we take immediate and decisive action against drug and alcohol abuse in all public transportation modes.

The CHAIRMAN. Senator Kasten do you have a statement?

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Thank you, Mr. Chairman. I want to commend you Mr. Chairman, and Senator Danforth, on the initiatives that are taken in S. 356 and S. 362. The use and abuse of drugs and alcohol by those to whom we trust our lives when we travel is something that just cannot be tolerated. I think we are all aware of the objections that some of those involved are making on grounds of invasion of privacy. But, I think that Mr. Riley put these concerns in perfect perspective when he appeared before the Surface Transportation Subcommittee just three days ago. He stated that to be entrusted with the lives of so many people, as are the persons in our rail and airline industries, is a privilege, not a right. Therefore we must assure the traveling public that the operators of our transportation system are performing to their best abilities, even if that means that those operators and others in the safety area must submit to mandatory, random drug testing.

I note from the statements of some of the parties here today that they feel the drug testing should only be done after some sort of reasonable cause threshold has been met. I disagree on two grounds. First, as we heard on Tuesday, the operators of the Conrail locomotives involved in the Chase, Maryland, accident were observed by one of their supervisors just a little over an hour before they pulled in front of the Amtrak train. Not only did he not notice anything that alerted him to any problem, but several supervisors on the scene of the accident did not notice anything suspicious. This despite the fact that all of these supervisors had been through training to notice indications of drug use.

Second, I think that the deterrent factor that random, unannounced tests provide is most important, as Secretary Dole has pointed out.

The concerns as to privacy rights have been not just the province of those appearing before us today. Mr. Chairman, I know that you and Senator Danforth have shared these concerns, but have had to weigh them against the concerns of the millions of citizens who use our rail, air, and highway systems. I also find it heartening the extent to which those advocates of mandatory, random testing who have appeared here today recognize the concerns as to any invasion of privacy. What we are looking for is the least obtrusive means of assuring the safety of our traveling public.

Finally, Mr. Chairman, I know that the two bills before us deal with just the rail and aviation areas, but I do recognize a need for the same sort of testing program with respect to those bus and truck operators using our highways.

I look forward to working with you, Mr. Chairman, and this Committee as we adopt a fair system of mandatory, random testing for the safety of all concerned.

Thank you, Mr. Chairman.

I welcome the Secretary.

The **CHAIRMAN**. Thank you very much.

Senator Trible.

Senator **TRIBLE**. Mr. Chairman, I look forward to hearing from the distinguished Secretary.

[The bills follow:]

100TH CONGRESS
1ST SESSION

S. 356

To promote safety in the operation of railroads and aircraft through testing for the use, without lawful authorization, of alcohol and controlled substances by the operators of railroads and aircraft, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 20), 1987

Mr. DANFORTH (for himself, Mr. DOLE, and Mr. GRAMM) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To promote safety in the operation of railroads and aircraft through testing for the use, without lawful authorization, of alcohol and controlled substances by the operators of railroads and aircraft, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(l) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(1) require that all railroad employees responsible for safety-sensitive functions, as determined by the Secretary, be subject to testing on a random basis for the use, without lawful authorization, of alcohol or a controlled substance;

"(2) consider application of existing rules, regulations, orders, and standards to other categories of employees, including employees responsible for the safety of passengers, railroad rolling stock, and track and related structures;

"(3) consider disqualification for an established period of time of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(4) consider disqualification for an established period of time of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, orders, or standards issued under this Act.

Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, orders and standards governing alcohol and drug use in railroad operations issued before the date of enactment of this subsection.".

SEC. 2. (a) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

"TESTING FOR ALCOHOL AND CONTROLLED SUBSTANCES

"REQUIREMENT OF TESTING

"SEC. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations establishing a program which requires air carriers, contract carriers, and foreign air carriers to conduct pre-employment, periodic recurring, and post-accident testing of airmen and crewmembers, and testing of airmen and crewmembers upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance. The Administrator shall establish such a program applicable to employees of the Federal Aviation Administration whose duties include direct responsibility for safety of flight operations.

"(2) The Administrator shall also require random testing as part of the program established under paragraph (1) of this subsection.

"PROHIBITION ON SERVICE

"(b)(1)(A) No air carrier, contract carrier, or foreign air carrier shall permit any individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section to serve as an airman or crewmember unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(B) In the case of any airman or crewmember determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who refuses to undertake or fails to complete a rehabilitation program described in subsection (c) of this section, who has previously undertaken, completed or failed to complete such a rehabilitation program, or who has been determined by the Administrator to have served as an airman or crewmember while impaired by or under the influence of alcohol or a controlled substance, the Administrator may revoke the airman certificate of such an airman, in the case of a crewmember, prohibit such individual from serving as a crewmember.

"(2)(A) The Administrator shall not permit any employee of the Federal Aviation Administration whose duties include direct responsibility for safety of flight operations who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section to perform any such duties unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(B) In the case of any employee of the Federal Aviation Administration whose duties include direct responsibility for safety of flight operations determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section who refuses to undertake or fails to complete a rehabilitation program described in subsection (c) of this section, who has previously undertaken, completed or failed to complete such a rehabilitation program, or who has been determined by the Administrator to have performed duties which include direct responsibility for safety of flight operations while impaired by or under the influence of alcohol or a controlled substance, the Administrator shall not permit such employee to perform any such duties.

"REHABILITATION PROGRAM

"(c)(1) Each air carrier, contract carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of airmen and crewmembers in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier, contract carrier and foreign air carrier is encouraged to make such program available to all of its employees other than airmen and crewmembers. Nothing in this subsection shall preclude any air carrier, contract carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier, contract carrier or foreign air carrier.

"(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include direct responsibility for safety of flight operations who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

"EFFECT ON OTHER REGULATIONS

"(d) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen or crewmembers.

"DEFINITIONS

"(e) For the purposes of this section, the term 'controlled substance' has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).".

(b) The Administrator of the Federal Aviation Administration shall amend section 91.11 of the Federal Aviation Regulations (14 CFR 91.11) to include mechanics and other employees directly responsible for the safety of flight operations as crewmembers for purposes of such section.

(c) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

"Sec. 613. Testing for controlled substances and alcohol.
"(a) Requirement of testing.
"(b) Prohibition on service.
"(c) Rehabilitation program.
"(d) Effect on other regulations.
"(e) Definitions.".

(d) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

○

II

100TH CONGRESS
1ST SESSION

S. 362

To amend the Federal Aviation Act of 1958 and the Federal Railroad Safety Act of 1970 to provide for testing for the use, without lawful authorization, of alcohol or controlled substances by the operators of aircraft and railroads, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 20), 1987

Mr. HOLLINGS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend the Federal Aviation Act of 1958 and the Federal Railroad Safety Act of 1970 to provide for testing for the use, without lawful authorization, of alcohol or controlled substances by the operators of aircraft and railroads, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Airline and Rail Passenger Protection Act of 1987".

SEC. 2. (a) Title VI of the Federal Aviation Act of 1958 (49 App. U.S.C. 1421 et seq.) is amended by adding at the end thereof the following:

“Alcohol and Controlled Substances Testing

“testing program

“Sec. 613. (a)(1) The Administrator shall, in the interest of aviation safety, prescribe regulations within eighteen months after the date of enactment of this section. Such regulations shall establish a program which requires air carriers, contract carriers, and foreign air carriers to conduct pre-employment, periodic recurring, random and post-accident testing of airmen, crewmembers, and airport security, screening contract personnel, and testing of such individuals upon a reasonable suspicion that they have used, without lawful authorization, alcohol or a controlled substance. The Administrator shall establish such a program applicable to employees of the Federal Aviation Administration whose duties include direct responsibility for safety of flight operations.

“(2) In prescribing regulations under the program required by paragraph (1) of this subsection, the Secretary shall—

“(A) require that any individual referred to in paragraph (1) of this subsection shall be subject to testing for the use, without lawful authorization, of alcohol or controlled substances not less often than once every six months;

“(B) require the disqualification, dismissal, or revocation of any certificate relating to air transportation issued to such an individual, in accordance with the provisions of this section; and

"(C) provide that all tests which indicate the use, without lawful authorization, of alcohol or a controlled substance by any such individuals shall be confirmed by another test of higher laboratory quality.

"PROHIBITION ON SERVICE

"(b)(1) No individual who is determined to have used, without lawful authorization, alcohol or a controlled substance after the date of enactment of this section shall serve as an airman, crewmember, airport security screening contract personnel, or employee of the Federal Aviation Administration with direct responsibility for safety of flight operations unless such individual has completed a program of rehabilitation described in subsection (c) of this section.

"(2) Any such individual determined by the Administrator to have used, without lawful authorization, alcohol or a controlled substance after the enactment of this section who refuses to undertake or fails to complete a rehabilitation program described in subsection (c) of this section, who has previously undertaken, completed or failed to complete such a rehabilitation program, or who has been determined by the Administrator to have served as an airman, crewmember, airport security screening contract personnel, or employee of the Federal Aviation Administration with direct responsibility for safety of flight operations while imparied by or under the influence of alcohol or a controlled substance, shall not be permitted to perform the duties relating to air transportation which such individual performed prior to the date of such determination.

“PROGRAM FOR REHABILITATION

“(c)(1) Each air carrier, contract carrier and foreign air carrier shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of employees referred to in subsection (b) of this section in need of assistance in resolving problems with the use, without lawful authorization, of alcohol or controlled substances. Each air carrier, contract carrier and foreign air carrier is encouraged to make such program available to all of its employees other than employees referred to in subsection (b) of this section. Nothing in this subsection shall preclude any air carrier, contract carrier or foreign air carrier from establishing a program under this subsection in cooperation with any other air carrier, contract carrier or foreign air carrier.

“(2) The Administrator shall establish and maintain a rehabilitation program which at a minimum provides for the identification and opportunity for treatment of those employees of the Federal Aviation Administration whose duties include direct responsibility for safety of flight operations who are in need of assistance in resolving problems with the use of alcohol or controlled substances.

“EFFECT ON OTHER REGULATIONS

“(d) Nothing in this section shall preclude the Administrator from adopting or continuing in effect other regulations intended to protect persons or property on the ground or in the air from the hazards to safety associated with the potential use of alcohol or controlled substances by airmen, crewmembers, airport security screening contract personnel or employees of the Federal Aviation Administration with direct responsibility for safety of flight operations.

“DEFINITIONS

“(e) For the purposes of this section, the term ‘controlled substance’ has the meaning given such term by section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).”.

(b) That portion of the table of contents of the Federal Aviation Act of 1958 relating to title VI is amended by adding at the end thereof the following:

“Sec. 613. Alcohol and controlled substances testing.
  “(a) Testing program.
  “(b) Prohibition on service.
  “(c) Program for rehabilitation.
  “(d) Effect on other regulations.
  “(e) Definitions.”.

Sec. 3. Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended by adding at the end thereof the following:

"(1) The Secretary shall, within one year after the date of enactment of this subsection, review existing rules, regulations, standards, and orders governing alcohol and drug use in railroad operations for the purpose of determining whether they are adequate to ensure safety. In conducting such review, the Secretary shall specifically—

"(1) require that all railroad employees responsible for safety-sensitive functions, as determined by the Secretary, be subject to testing on a random basis for the presence of alcohol and controlled substances;

"(2) require application of existing rules, regulations, orders, and standards to other employees responsible for the safety of passengers, railroad rolling stock, or track and related structures;

"(3) consider disqualification for an established period of time or dismissal of any employee determined to have used or to have been impaired by alcohol while on duty; and

"(4) consider disqualification for an established period of time or dismissal of any employee determined to have used a controlled substance, whether on duty or not on duty, except as permitted for medical purposes by law and any rules, regulations, standards or orders issued under this Act.

The Secretary shall amend any such rules, regulations, standards and orders to ensure that each railroad employee who is responsible for safety-sensitive functions, as determined by the Secretary, or who is responsible for the safety of passengers, railroad rolling stock, or track and related structures shall be used for the use, without lawful authorization, of alcohol or a controlled substance not less often every six months. Nothing in this subsection shall be construed to restrict the discretion of the Secretary to continue in force, amend, or further supplement any rules, regulations, standards and orders governing alcohol and drug use in railroad operations issued before the date of enactment of this subsection.".

SEC. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

○

The **Chairman**. This is a wonderful precedent because we had the other day, Madam Secretary, Mr. Gates up for confirmation, and at lunchtime the leader said how was his testimony? What did he say? I said we did not hear. We just had to listen to each other. Every Senator had an opening statement all morning long, so I hope we can continue with this precedent and hear from witnesses.

You are very welcome, and we are delighted to hear from you at this time.

STATEMENT OF HON. ELIZABETH H. DOLE, SECRETARY, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY MATT SCOCOZZA, ASSISTANT SECRETARY; AND MELISSA ALLEN, DEPUTY ASSISTANT SECRETARY

Secretary **Dole**. Thank you very much, Mr. Chairman. I appreciate your invitation to testify today on your proposed legislation to mandate alcohol and drug testing in the aviation and railroad industries.

When we board an airline, train or bus, or drive our cars on the highway, we literally put our lives in the hands of others. The effective operation of any transportation system, therefore, ultimately depends on a foundation of mutual trust and confidence in the vigilance and responsibility of other people. The abuse of drugs and alcohol by transportation workers in safety sensitive functions is a life-threatening violation of that trust.

Rarely does the private choice to use drugs have more devastating public consequences than on our nation's roads, rails, waterways and airways. The public does have every right to expect and to receive a drug-free transportation system, and those of us who serve the public have a duty to see that their expectations are met.

Last fall the President and Congress joined together in a call for a drug-free America. In September the President issued an Executive Order to combat drug use by Federal workers. Congress subsequently passed and the President signed the Antidrug Abuse Act of 1986.

Senator **Danforth**. Mr. Chairman, I wonder if the Secretary could hold just for a minute. Something has gone haywire with the sound system, I think, in here.

Thank you very much.

The **Chairman**. Thank you. Please proceed.

Secretary **Dole**. The Antidrug Abuse Act of 1986 was signed, extending the fight against drug abuse from beefed up law enforcement to enhanced education and awareness programs. The Department of Transportation certainly shares that commitment. We are developing plans for a series of steps, including mandatory drug testing, to insure that there is no room for drugs in the transportation workplace, whether that workplace is the Department of Transportation or one of the regulated industries.

Our goal is not to punish employees, but rather to encourage individuals with a debilitating personal problem to seek help through rehabilitation and counseling. We recognize that drug testing is a very sensitive issue that must be handled with care. Our watch word has been and will continue to be to assure the safety of the public while respecting individual dignity and privacy.

The Department's alcohol and drug use program for the railroad industry provides an important example of this kind of approach. Last year we implemented a Federal rule, the first in American railroad history, prohibiting the on-duty use or possession of alcohol or drugs, requiring post-accident and pre-employment drug testing, and authorizing the testing of employees for reasonable cause.

Because of this rule, the Conrail train crew was tested for drugs and alcohol in the wake of the tragic Conrail/Amtrak collision last month. The Federal Railroad Administration also has been working with rail management and labor on Operation Red Block, a successful voluntary program that reaches out to assist employees before their use of drugs or alcohol can pose a threat to safety.

The program, initiated by the Union Pacific Railroad and its labor organizations in 1983, emphasizes awareness, education, prevention and treatment with union-led prevention committees. The program seeks to change attitudes by encouraging the user to seek counseling and treatment and by reducing nonuser tolerance of drug and alcohol use in the workplace. The program has proven a major success, so successful that it has now been adopted by roughly half the nation's major railroads.

I believe, however that even stronger measures are necessary. Since the Railroad Safety Act's enactment in 1970, the FRA has had general regulatory authority over all areas of railroad safety but has never had authority to impose statutory sanctions on an individual who has violated Federal safety rules. The time has come to provide that authority so that the FRA rules generally, whether random testing or standards to prevent tampering with safety devices, will be directly enforceable against employees with safety-related responsibilities.

We have transmitted legislation proposing that DOT be granted this authority as part of the Rail Safety Reauthorization Act. I urge you to consider it seriously either as part of the Rail Safety Bill or as an addition to the legislation we discuss here today.

Our efforts extend to the Department's own employees as well as to those of the industry we regulate. I recently proposed a comprehensive program for DOT employees. The program includes extensive drug awareness and education campaigns, counseling and rehabilitation, and random drug testing for employees in critical safety and security-related positions.

After an intensive review within the Department and careful consideration for the legitimate concerns of the affected employees, I concluded that random testing provides the most reasonable deterrent available. More than any other measure, I believe it will encourage individuals in sensitive jobs who have drug problems to end their dependency and to seek rehabilitation.

Our drug testing experience among Coast Guard uniformed personnel and comparable experience in the Department of Defense bears this out. As you know, military personnel have been subject to random testing for several years. In the Coast Guard's mandatory random testing program, the incidence of drugs in urine samples decreased from about 10 percent to about 3 percent from October 1983 through 1986. Although illegal drug use was certainly prohibited by the Coast Guard prior to the testing program, random testing made an enormous difference. Once individuals recognized that random testing was likely to uncover drug abuse, most abusers changed their behavior.

Of course, most Department and industry employees are law abiding and responsible citizens. By asking those in safety-related positions to undergo a drug test, we are seeking their help that we might all join together to fight a serious societal problem that hurts every one of us, whether or not we ourselves abuse drugs or alcohol.

In addition to our regulatory initiatives, the Department plans to hold field conferences on drug use prevention programs within the transportation industry. These conferences will provide a forum to exchange information about effective comprehensive drug prevention programs in transportation. There are many fine programs addressing the drug issue. These conferences will provide an opportunity for all who are responsible for transportation safety to learn from one another.

Your letter inviting me to testify at this hearing contained a number of specific questions about your proposed legislation. I want to be as responsive as I possibly can be to your questions; however, we have a number of rulemakings under way that deal with these issues and for which the docket remains open. Thus, I can answer your questions on our program for DOT employees in some detail, but I cannot be as specific regarding proposed rulemaking action for the regulated industries; otherwise, I could be perceived as prejudging the outcome and jeopardizing the integrity of the rulemaking process, thus reducing necessary flexibility to craft a reasonable rule.

While it is necessary to form preliminary opinions in the development of a policy proposal, my mind remains open to any information we receive during the rulemaking that could change these opinions.

With that caveat in mind, let me say that I strongly support Chairman Hollings' bill, S. 362, and Senator Danforth's bill, S. 356. Both bills would amend the Federal Aviation and Rail Safety statutes, demand comprehensive drug and alcohol testing and rehabilitation program for safety-sensitive employees, including DOT employees whose duties include direct responsibility for flight operations.

I would like our staffs to work together, Mr. Chairman, to make some technical improvements, such as assuring that any application to foreign air carriers is fully consistent with United States international obligations. In addition, the rail section's designation of the employee categories subject to testing which is worded "employees responsible for safety-sensitive functions, as determined by the Secretary" could be used throughout the bill to refer to airline and FAA employees as well.

In general, however, I believe your bills take the right approach in addressing this problem, and I will do all I can to support your efforts. I look forward to working with you on this as well as other initiatives in our joint efforts to achieve a drug-free America. Again, I appreciate very much the opportunity to be here today and to discuss these important matters with you, Mr. Chairman. Thank you very much.

The CHAIRMAN. Thank you.

Secretary Dole. May I just mention that Deputy Assistant Secretary Melissa Allen and Assistant Secretary Matt Scocozza are with me this morning.

The Chairman. Very good.

Madam Secretary, in the Coast Guard, which is under your jurisdiction, you stated now that you do have random drug testing?

Secretary Dole. That is right.

The Chairman. What about the issue of constitutionality? Has that been raised with respect to members of the Coast Guard? Generally, the constitutional question of the right of privacy will be one big issue raised here by organized labor. So let us get to the hurdles here and tell me what you think.

Secretary Dole. Well, let me discuss generally as I see the constitutional issue. Of course, all of our armed forces do have the random testing provision, so it is not just the Coast Guard, and it has been found to be very effective.

Now, there are some lower courts, State and local as well as lower Federal courts, that have ruled against random testing, but there is no definitive legal ruling at this point. In fact, one union has already indicated that it will bring suit over this random testing proposal, and I am confident, Mr. Chairman, as is the Department of Justice, that we would prevail in any ensuing legal case, that the balancing test which must occur would balance out in favor of preserving public health and safety because that, of course, is what we are talking about here.

While there may be concerns raised about individual privacy and Fourth Amendment rights, I am confident that we have a very strong case and that the scales would be tipped in the balancing in favor of public health and safety.

Now, there are two court of appeals cases on the books right now. One is *Shoemaker* v. *Handel*, which is a racehorse case involving jockeys, and the Supreme Court declined to review that particular case which did uphold random testing. There is another involving prison guards which approved random testing. So those two are on the books.

Military personnel are not subject to the same constitutional protections as civilians, and I would have to elaborate further on that for the record.

[The following information was subsequently received for the record:]

The Supreme Court and other courts have recognized the differences between military and civilian life and the constitutional standards to be applied to each. Although these cases affirm the general principle that military personnel are entitled to constitutional protections, they also stress that the different character of the military community and of the military mission require a different application of these constitutional protections.

The Chairman. I was wondering about that, because we have before us the Secretary of the Department of Transportation. We have the random drug testing under one jurisdiction, namely the Coast Guard, and we wonder about the air and railway employees engaged in public safety and public transportation. Why shouldn't airline motor transportation personnel be under the random drug testing rules as well?

Secretary DOLE. Yes, sir. Actually, as we move forward we are raising the question of random testing across all modes of transportation.

The CHAIRMAN. But you do not recommend it right now for the trucks and buses?

Secretary DOLE. Well, we have right now an ANPRM which is already under way, which is looking at post-accident testing and some other aspects. We would reissue an NPRM addressing higher standards for drivers of hazardous material, raising the random testing issue.

So let me discuss that for a moment. I think the best way to put this is that, across all our modes, we have rulemakings in various stages. Some are NPRMs, notice of proposed rulemakings. Others are ANPRMs, which is one step earlier, which is gathering data rather than a proposed rule. In all of these proceedings, we are going to be looking at the issue of random testing.

There are some difficulties with regard to feasibility. For example, in the trucking area you have about 300,000 independent owner-operators. It is a question of how you do it. You do not have the structure which you would with a large company where the test can be done in a routine way. These are owner-operators. How do you do it, when they are stopped for roadside checks? It really is a difficult problem of feasibility.

The same thing with general aviation pilots. I think there are issues there that would have to be looked at very carefully but, indeed, we do feel they ought to be addressed, and they will be addressed in our proceedings.

The CHAIRMAN. That is my question, because obviously it is a feasibility problem. We all are users of the highways, so if we get all the truck drivers and the automobile drivers, you would get you and me as we walk out the door here and all 242 million Americans being tested at one time or the other. So it must be realistic in its attempt.

Is what the Secretary is attesting to is that while there is a feasibility question, it would be the hope in public transportation for not only air and railway employees but also in the motor transportation section, too, that those who are engaged in public safety also be given random drug tests?

Secretary DOLE. That is correct, yes. I am working and talking with members of the industry who are concerned as well. You know, there are obviously already some very good industry programs with regard to drug testing, so it is a matter of feasibility but I would hope we would be able to find a way to accomplish it.

The CHAIRMAN. Very good. With the committee here, I am, of course, going to yield to our ranking member and the author of one of the two bills. Then we will move to Senators Pressler, Exon, Packwood, Stevens, Trible, Kasten and Rockefeller. I appreciate the strong attendance this morning, and I yield to you, Senator Danforth.

Senator DANFORTH. Thank you very much.

Madam Secretary, thank you for your testimony. Getting to the type of analysis that I think Congress is going to have to make in order to sustain a constitutional challenge, that is balancing the reasons for the bill against the questions of personal liberty, first of all, Madam Secretary, there is no doubt, is there, that drugs are used to some extent by personnel in the transportation industries?

Secretary **Dole**. That is correct. I would just point out several things on that point, if I may. First of all, the FRA, rule that we put into place 11 months ago, which was the only reason, by the way, that we were able to test after the tragic accident, the Conrail/Amtrak crash, because that rule had been put into place.

Their experience over the last year shows that in testing about 759 employees following accidents, they found about a 5 percent usage of alcohol or drugs, about 3.8 percent on drugs. That is 3.8 percent too much. So there is that evidence.

There is also the fact that in the Navy and the Coast Guard programs, we see that the Navy, for example, in one year in their testing dropped from about 10 percent to about 5 percent usage, cut it in half; and then in the Coast Guard, of course, we have similar kinds of evidence.

Senator **Danforth**. There are a lot of anecdotal evidences. They are testing FAA employees in a couple of cities. I am told that Greyhound tested applicants and found something like 30 percent of the applicants for employment by Greyhound had been using drugs.

It is possible, is it not, to put together a pretty strong factual case based on both statistics and anecdotes that there clearly is a drug problem in transportation, just as there is a drug problem throughout the country?

Secretary **Dole**. Well, this is it. The thing is we are all sensitive to the fact that there is a problem that is pervasive in our society that is prevalent at every level of our society, and what is there to say that we are exempt from that? Plus you have the specific instances; for example, in Kansas City and Los Angeles with air traffic controllers, we did determine that there had been some off-duty use. There was rehabilitation begun immediately, but yes, there are those instances.

Senator **Danforth**. Could I ask you, Madam Secretary, in the very near future if the Department could furnish us with some sort of analysis just to shore up the fact that clearly there is a problem in drug use, both statistical and anecdotal, just to provide some background evidence for the committee?

Secretary **Dole**. Fine.

[The following information was subsequently received for the record:]

In response to the request for statistical and anectodal information held by the Department concerning the abuse of drugs in the transportation sector, the following materials are provided:

The Coast Guard Statistics on Drug Urinalysis Testing of Military Personnel [random testing program].

Coast Guard accident statistics demonstrating incidence of alcohol and drugs in marine accidents: Comparison of "Accident Data by State" for 1985 and "Alcohol or Drug Involvement—1985 by State".

Commercial Marine Accidents which involved Drug/Alcohol Use (1981-1986, 6 years inclusive).

Suspension and Revocation Actions taken Against Licensed, Certificated, or Documented Seamen.

[The following information was not reproducible.]

Control of Drug and Alcohol Use for Personnel Engaged in Commercial and General Aviation Activities; Advance Notice of Proposed Rulemaking.

Control of Alcohol and Drug Use in Railroad Operations; Final Rule.

Summary of Post-Accident Testing Events (49 CFR Part 219, Subpart C) (FRA alcohol Drug Rule)—February 10, 1986 through January 15, 1987.

Miscellaneous Drug and Alcohol Incidents in Transit.

Wall Street Journal article entitled "Los Angeles Bus Drivers Fail Drug Test at 10% Rate" (9/17/86).

DOT Inspector General "Report on the Drug and Alcohol Awareness Program—Federal Aviation Administration" (Report No. AV-FA-4-039, Sept. 28, 1984).

COAST GUARD STATISTICS ON DRUG URINALYSIS TESTING OF MILITARY PERSONNEL

[Percent of drug tests confirmed positive]

Year	Total tests	Total positive	Percent positive
Fiscal year 1983	12,319	1,269	10.3
Fiscal year 1984	43,796	1,489	03.4
Fiscal year 1985	43,500	957	02.2
Fiscal year 1986	49,842	1,894	03.8
Fiscal year 1987	11,434	354	[1] 03.1

[1] First quarter.

ACCIDENT DATA BY STATE [1]

1985	Number of accidents				Number of vessels involved in accidents				Number of persons		Amount of damage (dollars)
	Total	Fatal	Non-fatal injury	Property damage only	Total	Fatal	Non-fatal injury	Property damage only	Killed	Injured non-fatally	
Total	6,237	938	1,814	3,485	8,305	940	1,888	5,477	1,116	2,757	$20,039,000
Alabama	75	24	10	41	88	25	10	53	30	21	109,900
Alaska	62	48	3	11	69	48	3	18	70	8	250,500
Arizona	131	6	30	95	194	6	30	158	6	36	412,700
Arkansas	39	10	13	16	53	10	14	29	11	24	75,000
California	869	60	303	506	1,221	60	315	846	76	403	4,246,400
Colorado	57	11	14	32	75	11	15	49	13	23	51,200
Connecticut	67	4	20	43	101	4	22	75	4	42	159,600
Delaware	20	1	4	15	26	1	5	19	2	9	161,900
District of Columbia	8	2	4	2	10	2	4	4	2	9	68,500
Florida	595	61	189	345	804	61	195	548	65	295	2,722,200
Georgia	151	31	49	71	186	31	52	103	34	95	285,300
Hawaii	41	2	9	30	50	2	9	39	5	10	417,300
Idaho	42	7	18	17	51	7	18	26	8	25	81,800
Illinois	108	27	22	59	160	27	24	109	30	39	301,200
Indiana	119	20	41	58	154	20	41	93	23	49	155,900
Iowa	43	7	14	22	56	7	16	33	9	23	52,100
Kansas	28	3	11	14	39	3	11	25	4	15	18,200
Kentucky	123	24	21	78	157	24	24	109	26	51	238,000
Louisiana	141	51	36	54	178	51	38	89	61	67	342,600
Maine	57	5	17	35	74	5	18	51	6	20	128,300
Maryland	187	18	49	120	257	18	50	189	18	88	1,115,300
Massachusetts	101	14	26	61	160	14	20	118	15	41	501,400
Michigan	405	45	140	220	535	45	140	350	52	184	363,500
Minnesota	150	23	60	67	211	23	61	127	25	83	163,000
Mississippi	83	32	28	23	93	32	29	32	41	38	198,500
Missouri	190	25	51	114	229	25	52	152	26	76	297,600
Montana	14	7	2	5	15	7	2	6	41	2	3,300
Nebraska	24	8	4	12	28	6	5	15	9	7	32,800
Nevada	57	3	11	43	71	3	11	57	4	15	167,100
New Hampshire	4	4	0	0	4	4	0	0	8	0	0
New Jersey	318	15	100	203	427	15	103	309	20	137	1,062,400
New Mexico	21	4	5	12	26	4	5	17	4	11	43,000

ACCIDENT DATA BY STATE [1]—Continued

1985	Number of accidents				Number of vessels involved in accidents				Number of persons		Amount of damage (dollars)
	Total	Fatal	Non-fatal injury	Property damage only	Total	Fatal	Non-fatal injury	Property damage only	Killed	Injured non-fatally	
New York	302	42	93	167	416	43	90	275	53	162	925,100
North Carolina	107	30	27	50	129	30	29	70	39	41	280,000
North Dakota	5	1	3	1	8	1	3	4	1	5	7,900
Ohio	208	25	34	149	277	25	35	217	29	71	621,200
Oklahoma	71	13	27	31	92	13	31	48	17	46	152,000
Oregon	83	17	12	54	105	17	14	74	23	21	179,800
Pennsylvania	70	15	15	40	96	15	17	64	16	25	185,800
Rhode Island	46	6	6	32	72	6	8	58	6	12	118,700
South Carolina	86	16	16	54	110	16	17	77	18	25	181,600
South Dakota	13	1	4	8	14	1	4	9	1	4	26,700
Tennessee	76	20	25	30	98	20	27	51	23	33	107,600
Texas	283	65	60	158	365	65	65	235	72	97	1,233,700
Utah	129	4	49	76	163	4	49	110	5	62	284,300
Vermont	9	2	3	4	12	2	3	7	2	3	63,900
Virginia	101	17	40	44	129	17	40	72	18	58	255,300
Washington	162	31	38	93	214	31	39	144	38	56	612,500
West Virginia	23	6	9	8	26	6	9	11	7	17	94,300
Wisconsin	97	19	38	40	129	19	40	70	21	55	120,800
Wyoming	19	3	6	10	27	3	7	17	6	18	43,400
Guam	0	0	0	0	0	0	0	0	0	0	0
Puerto Rico	5	3	0	2	5	3	0	2	6	0	1,500
Virgin Islands	12	0	2	10	16	0	2	14	0	2	310,700
American Samoa	0	0	0	0	0	0	0	0	0	0	0
Northern Marianas	0	0	0	0	0	0	0	0	0	0	0

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[1] Note: We estimate that we receive reports of only 5% to 10% of all reportable accidents not involving fatalities.

ALCOHOL OR DRUG INVOLVEMENT 1985 BY STATE

State	Fatalities	Injuries reported	Damage (000) reported	Vessels reported
Alaska	17	0	$14.3	13
Alabama	5	0	1.0	5
Arkansas	1	3	2.6	2
Arizona	2	2	82.7	4
California	16	25	67.5	37
Connecticut	0	3	0.4	2
Florida	4	5	48.8	13
Georgia	6	10	20.5	8
Hawaii	0	1	0.1	1
Iowa	0	1	1.5	2
Idaho	1	0	1.6	2
Illinois	5	0	0.2	4
Indiana	5	0	40.1	7
Kansas	0	0	0.2	1
Kentucky	2	0	0.0	3
Louisiana	4	7	1.3	5
Maine	1	1	0.2	2
Maryland	4	4	31.0	6
Massachusetts	6	0	1.4	9
Michigan	8	18	9.8	28
Minnesota	5	7	6.0	9
Missouri	0	8	8.2	4
Mississippi	6	1	0.0	6
Montana	0	1	1.0	1

ALCOHOL OR DRUG INVOLVEMENT 1985 BY STATE—Continued

State	Fatalities	Injuries reported	Damage (000) reported	Vessels reported
North Carolina	7	2	3.5	6
North Dakota	1	0	0.0	1
New Hampshire	4	1	0.8	1
New Jersey	7	11	8.4	18
New Mexico	0	0	0.0	1
Nevada	1	0	0.0	1
New York	4	2	26.3	8
Ohio	3	1	6.8	10
Oklahoma	0	1	1.0	1
Oregon	4	1	4.0	6
Pennsylvania	2	0	6.0	3
Rhodes Island	3	0	0.0	3
South Carolina	3	1	8.0	3
South Dakota	1	0	0.0	1
Tennessee	2	0	0.0	4
Texas	8	2	3.0	12
Utah	0	5	13.6	3
Virginia	1	0	0.5	2
Washington	5	2	7.7	11
Wisconsin	2	0	0.0	2
West Virginia	1	4	6.9	5
Wyoming	1	5	16.2	3
Total	158	135	453.1	279

COMMERCIAL MARINE ACCIDENTS WHICH INVOLVED DRUG/ALCOHOL USE

[1981-1986, 6 years inclusive]

	Involving vessel accidents		Not involving vessel accident (personnel accidents only)	
	Deaths	Injuries	Deaths	Injuries
Total marine accidents resulting from all causes	20,604		9,323	
Total deaths/injuries resulting from all causes	1,114	960	824	8,717
Total deaths/injuries involving drug/alcohol use	17	3	59	49
Deaths/injuries involving drug or alcohol use by vessel type:				
Fishing vessels (uninspected vessels operated by unlicensed personnel)	14	0	16	4
Towing vessels (uninspected vessels operated by licensed personnel)	2	1	8	1
Passenger vessels (inspected vessels operated by licensed personnel)	0	0	7	4
Freight vessels (inspected vessels operated by licensed personnel)	0	1	10	28
Tank vessels (inspected vessels operated by licensed personnel)	0	0	5	10
Offshore supply vessels (inspected vessels operated by licensed personnel)	0	0	2	2
Other vessels (industrial, research, etc.)	1	1	11	0

SUSPENSION AND REVOCATION ACTIONS TAKEN AGAINST LICENSED, CERTIFICATED, OR DOCUMENTED SEAMEN

During the period 1982 through 1986, the Coast Guard took suspension and revocation action against 98 seamen for alcohol-related incidents and against 150 seamen for drug-related incidents.

Senator DANFORTH. It is also clear, is it not, that when people use drugs in the transportation industry, it does present a very real danger to safety? There is no doubt about it; is that correct?

Secretary DOLE. That is right. Yes, our criteria on those involved in safety and security-related positions, those who have a direct and immediate impact on the life and health of our citizens as they travel, exactly.

Senator DANFORTH. As a factual matter, there is no doubt that drugs have been implicated in specific accidents, including fatal accidents in the transportation industry. Recently the Conrail/ Amtrak accident was—

Secretary DOLE. Well, no conclusions have been drawn yet. The NTSB has not reported, but—

Senator DANFORTH. I understand that, but the drug tests have been positive.

Secretary DOLE [continuing]. There was presence of marijuana detected in the tests.

Senator DANFORTH. All right. Now when Mr. Riley testified before the subcommittee a couple of days ago, it was his position that testing only on the basis of a probable cause to believe that drugs have been used by an employee is not adequate. He pointed to the example of the Conrail employees who have been involved in the accident, and he testified that a little more than an hour before the accident those employees had been in the presence for something like 15 minutes of their supervisor and that their supervisor had been trained in identifying drug use when he saw it, yet he could not tell on the basis of that time spent with these two people that they had been using drugs.

Do you believe that testing on the basis of probable cause is adequate—

Secretary DOLE. No.

Senator DANFORTH [continuing]. Or do you beleive that the sine qua non of an effective drug testing program includes a component for random and mandatory testing?

Secretary DOLE. I think it is important if we are going to insure that we have a drug-free transportation system that we take the next step to random testing, which is, I believe, the most reliable way and the most important tool that we have in fighting this problem.

Senator DANFORTH. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Exon.

Senator EXON. Thank you very much, Mr. Chairman.

Welcome again, Madam Secretary. Let's get down to some of the interesting cases.

From the review that you have made thus far, how would you write legislation now, or how would you write rules and regulations which might come under your jurisdiction, with regard to what kind of a random test would be used?

Everyone seems to feel, following up on the comments made by my friend and colleague Senator Danforth from Missouri, that we're not going to get very far if we have to first prove some likely cause. I mean, I would think that that would be a very effective way to block very much from ever happening.

And so we have fallen back on some kind of random testing. And there's been a lot of talk about—so that there couldn't be any feeling that somebody was out to get someone that we might use computers which would randomly select people.

Is that the best method that you have discovered thus far, or are there other options that we might consider?

Secretary Dole. Senator Exon, on specifics on that sort, I think our rulemaking proceeding will be useful in determining, for those we regulate, what the best procedure would be.

As far as the DOT employees are concerned, the Department of Health and Human Services just yesterday had a press conference to announce their guidelines, which will be mandatory for the federal departments.

And we have been working along with them, since we are the first to move in this direction outside of the uniformed military forces. We will be complying with their guidelines for DOT employees.

But as far as the specifics for the regulated industries, I think that that's something the rulemaking is going to be very important in determining just what these specific procedures will be.

As far as who you test, I would say that, again, going back to our standard, those who are involved in safety and security related functions which impact in a direct and an immediate way on the protection of life and property; the public health and safety; national security; those who have top secret clearances, for example.

That's how we characterize the employees.

Senator Exon. Now, but I was asking specifically. In other words you don't care to comment now whether at the present time the use of random computers would be the best vehicle?

Secretary Dole. No, at this point. All of that, in terms of our rulemaking, we'll be looking at—the procedures, and then we'll be following HHS, as far as their guidelines, which were just announced yesterday.

Senator Exon. Madam Secretary, a rather surprising development came out of the hearing last Tuesday. I asked the railroad executives that were testifying as to whether or not they did any inquiry at all with regard to an engineer's public driving record. I asked them whether or not if such information is public.

It was quite obvious, and I think the record will show, that none of these railroad executives fully comprehended what I was asking them. They didn't know whether or not that information was available to them.

I have checked and found that it is available to them if they want it. However, they may have to pay for it. It is obvious to me, whether it's a pilot or a railroad engineer, that if I were going to hire new employees, one of the first things I think I would want to do is determine what kind of a record that individual had compiled. For example, I would want to know whether or not that individual had ever been arrested under the DWI statutes of any state.

Evidently that has not been done. I would suspect that sooner or later some sharp trial attorney, in bringing about some kind of a claim, is going to ask on the witness stand of a top railroad executive, "before you hired this man that caused this accident, did you even bother to check what his driver's record was"? If the answer comes back, "no, we didn't bother with it," I would think that the trial attorney would make a pretty good case.

Is there any reason that you can see why we shouldn't encourage the public transportation companies to do a better job of investigating individuals upon hiring them as well as an ongoing investigation in order to detect problems which could show up on an individual driving record.

With respect to the people in charge of public conveyances—why hasn't that been done in the past?

Secretary DOLE. Well, I think that we should encourage them to do that. And that's something in this rulemaking proceeding we could look at—the possibility of requiring a program of that sort.

Now, as far as the Federal Railroad Administration and the FAA, at this point we would not have access to the National Driver Register.

Senator EXON. Who would not?

Secretary DOLE. The FRA or the FAA. But this is again legislation—we're going to ask you for the right—Congress has to provide access—

Senator EXON. Madam Secretary, you or the operating companies have the right, I think today, to write to the State of Nebraska and get the driver's license record of Jim Exon. That's what I'm saying. I'm getting into all of these involved things. I'm talking about the very mundane things that I think some of these people should be doing before they hire, and before they keep rehiring.

Secretary DOLE. I agree with you.

Senator EXON. Thank you.

Secretary DOLE. I would just make one comment. The National Driver Register ultimately will provide access to all 50 states, which can be very, very useful. That's still some ways down the road. It's a highly technical thing.

But again, we're going to ask Congress for the right to have access to that particular tool.

Senator EXON. Thank you. My time is up, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

On the subject of probable cause, and the constitutional questions raised. Your position is that you must have probable cause for the individual to be tested. On the contrary, that is what this hearing is about.

We're having a congressional hearing at this time, and I think we're going to find probable cause before we get through. And that will have been determined.

Senator Pressler.

Senator PRESSLER. Madam Secretary, let me ask you your views of some of the parts of the Hollings bill. Granted, this is a bill that Senator Hollings and the Senate is submitting, so you can hardly speak for it. But you've endorsed it.

Secretary DOLE. The concept. There may be a few minor things here and there on which we're not in total agreement.

Senator PRESSLER. For example, it states on page 2 that such regulations shall establish a program which requires air carriers, contract carriers, and foreign air carriers, to conduct preemployment, periodic, reoccurring, random, and post-accident testing and so forth, in testing such individuals upon a reasonable suspicion that they have used drugs.

So this would not be pure random. It would only occur when there was—would you envisage to only occur when someone, when a supervisor saw the signs of alcohol or saw the signs of drugs?

That is, the testing would not occur on a purely random basis. Let's say we were to stop a train and say—or before it took off, say, we're going to test everybody for alcohol and drugs, the five key crew members. There's no suspicion here, but we just want to do a test.

Secretary DOLE. As I read this, all of these test methods would be utilized, just as in our rule. In other words, it includes pure random testing but, at the same time, in the case of those who are required to take a physical exam now, we would add the drug test to the physical exam as well.

We would also do preemployment screening, so that before they come into a job they'd be tested, and after an accident, and on reasonable cause.

In fact, with all employees, we would extend "reasonable cause" testing to our entire workforce.

So I see these all working together as five different methods which complement each other. And the pure random testing is there, as I read it.

Senator PRESSLER. Well, let me be more specific. I'm trying to get a picture of how this would work. And I'm not putting you on the spot. I'm just trying to get what your recommendation would be as we retailor this legislation.

Now, as I understand it, a drug test would require a blood test; is that not correct? Or is there a test that can be used for use of drugs other than a blood test?

Secretary DOLE. Urine tests.

Senator PRESSLER. Urine tests, all right. Now, does that mean if a train were about to take off, it would be held up for a test?

Secretary DOLE. No.

Senator PRESSLER. Or what would happen? Would that employee be taken off if he were suspected? It would only occur if there had been an accident?

Secretary DOLE. Well, there'd be five different ways. Let me describe the random test for a moment, just how we would do it with DOT employees, for example.

All of those with safety and security-related positions would be involved. Those with top secret clearances, which would include myself.

So let's say that one day I just get word that "You're to have a random test". And within so many minutes, I go and have my test. And within five days, two things are done.

First of all, if that test were positive, then there is a confirmation with gas chromatography mass spectrometry, which is virtually, according to labor, 100 percent accurate. It really confirms results. If there's an initial test that could have a false positive, that's what you need to make sure.

We would not even see the results of the first test if it shows positive. We want the confirmation before we even hear about it.

There would also be another step, which would be for a medical officer to look at that positive test, with the confirmation, and determine whether there are any other alternatives that could have caused this to happen.

So there are three steps. This is what takes place with a certain number of your employees, on a daily or routine basis. Your number comes up at some point.

Then you have the post-accident testing. Then you also have preemployment. And finally, reasonable cause, if it appears that a person is on drugs, or there's evidence to make one suspicious, so-called reasonable cause, then once again the supervisor could require a test.

Senator PRESSLER. Now, this legislation calls for a program for rehabilitation. Again, explain just the practical steps that would occur.

And what the legislation says is one thing, but what would be your recommendations? Now the employee wouldn't be fired at that point if he was found to have used drugs, or if he was on the job with drugs or alcohol, he would not be fired, he would be put into a program for rehabilitation which you would largely design. Then he'd be able to go back to work, is that correct?

Secretary DOLE. Okay, the first thing would be, if a person is literally caught using drugs on the job, they would be dismissed.

Now, let's say that they test positive in a random test. Then what we do is offer rehabilitation counselling assistance to the employee, moving them out of that security or safety related position, that sensitive position, while they're going through rehabilitation.

If the employee says, "I don't want to do that, I don't want rehabilitation," then they would be dismissed.

If they go through rehabilitation, come back to work, back in their position, and they test positive a second time and it's confirmed, then they would dismissed.

But the whole idea here is the opportunity for rehabilitation—and I want to stress this, because first and foremost, we want to help the individual employee. This is a terrible problem. And if an employee has a drug or an alcohol problem, we want him to step up and say so—they don't have to tell me or any supervisor. They can just go into the employee assistance program.

But get help. Let us help, in terms of counselling, in terms of rehabilitation. We're working with OPM right now to extend health carrier coverage, insurance coverage, if there's a problem that's going to take long-term rehabilitation like a cocaine problem.

We want to be sensitive to the needs of the employees, first and foremost. And we want to protect the safety of our system.

That's the way I would anticipate it working. But I think that if a person is actually found using drugs on the job, that's a different case.

Senator PRESSLER. My time is up.

That does walk me through what your views of the specific steps are. Thank you very much.

The CHAIRMAN. Thank you. Senator Kasten.

Senator KASTEN. Mr. Chairman, thank you. I have no questions.

The CHAIRMAN. Senator Rockefeller.

OPENING STATEMENT BY SENATOR ROCKEFELLER

Senator **Rockefeller**. Mr. Chairman, I have a statement I want to make for the record. But I want to declare my position on the issue in that I happen to agree with the general thrust of these two bills, Secretary Dole.

I think we must do all we can possibly do about making airplanes and rail and other things mechanically safe. However, if we're avoiding this problem, which is obviously increasing in this country and which appears to be increasing within these industries, it's not much use to talk about spending millions or billions on rail safety or inspections. It doesn't make a whole lot of sense.

So I support it. I have concerns, and those I want to put to you. However I think they're natural concerns as we work out a program. And I hope that some form of this bill will pass.

Mr. Chairman, thank you for convening this hearing and for introducing a bill that goes to the heart of a national problem—drug abuse by employees whose irresponsible behavior might threaten the lives of the travelling public.

The public has the *absolute* right to be protected from the consequences of employee drug and alcohol abuse when they board a plane, train, or other form of conveyance. It's that simple.

Unfortunately, too many incidents have demonstrated that public safety took second place to an employee's drug or alcohol habit. The recent Conrail-Amtrak accident and the positive drug tests of two Conrail employees tragically brought the problem home to all of us.

We don't really know whether this crash was, in fact, caused by the employees' use of marijuana. But we are repelled by the idea that people employed in life-sensitive positions would perform their jobs in any sort of impaired condition.

When we board public transportation, it's not like getting into our cars and assuming responsibility for ourselves and our families; we have relinquished control—and entrusted our lives—to someone else. And I, for one, would not willingly entrust my life, or the lives of my family, with someone who is drunk or stoned on drugs.

Mr. Chairman, we spend a lot of time here in Congress worrying about various air and rail safety problems. We have held countless air and rail safety hearings, during which we have examined the safety precautions of our air and rail systems. It's important that we do that. However, the facts show that human error is a significant cause of air and rail crashes. So even if an airplane or a railroad is mechanically sound and clear for takeoff or departure, a drunken pilot or stoned air controller throws our precautions to the winds.

Mr. Chairman, while I don't want to dismiss the concerns about privacy that drug testing naturally raises, I believe that the travelling public's right to safety is our paramount concern. And the only way to ensure that railroad and aviation employees are drug-free, is to allow random drug testing.

There is no reason, however, why we cannot protect our fundamental civil liberties, as well as the travelling public. For example, I would like to see a right of appeal for employees who test positive for drug use. Also, I am quite concerned about the testing laboratories with which the Department of Transportation contracts. We need to ensure that these are high quality labs and not fly-by-night operations. I also feel strongly that the employer protect the confidentiality of the employees' test results, and other medical information he might have about the employee's health.

Mr. Chairman, there are clearly a lot of ways that we can improve on the drug testing process. The process is not fool proof. Your inclusion, in the bill, of a second confirming test is necessary and there are other safeguards we should include as well. However, most importantly, we must safeguard the lives of our public—and drug-free skies and rails are a good start.

One of my concerns involves the question of confidentiality. It may have been brought up this morning.

Secretary **DOLE**. No, it hasn't been.

Senator **ROCKEFELLER**. People can be taking chemotherapy treatment for cancer. Or they can be taking other treatments, insulin for diabetes, and that's going to show up.

Now, that's not going to get them fired because they're taking drugs. But it's a fact that if employers discover that somebody has cancer and they did not know that—it could be used as an excuse to fire them, and that's wrong. There are a lot of people who have cancer who are taking chemotherapy who do their work well and who decide to keep it confidential. This decision to keep it confidential should be respected. If not, it could adversely impact upon their employment situation.

Secretary **DOLE**. I agree.

Senator **ROCKEFELLER**. How will we protect against that?

Secretary **DOLE**. Well, I have the same concern you do that we make certain on the confidentiality aspect. And I think this is something that is going to take some careful work. I'm not sure we have all the answers yet.

For example, with FOIA requests. And obviously, there are protections with regard to requests of that sort that I would want to utilize to the fullest.

But I would like to suggest that I work with you and this committee to make sure that we are satisfied on this point. Because I couldn't agree more that there certainly are aspects of this that you want to protect.

There will be a medical review officer, of course. And that obviously is a matter subject to confidential physician-patient privilege.

But I think we ought to look at all aspects of it.

Senator **ROCKEFELLER**. There are, for example, I think 40 states that regulate confidentiality with respect to this, but there are only about 12 of them which preclude third parties from getting various kinds of information, or general medical information. That is a matter of concern to me.

Another matter of concern to me is the business of test accuracy. This has become a huge business. It's come on very quickly. There are a lot of laboratories that are not licensed.

Driving home the other night from work, I listened to a report on National Public Radio. They talked about 73 tests that had been done by a undercover government group. It was discovered that there were 7 out the 73 tests that were accurate in this particular case. This was in the Washington, D.C. area.

Other tests range from zero to 60 percent or even to 100 percent accuracy or inaccuracy readings.

Now, I assume that the Department of Transportation would use only those labs which have the highest proven licensed quality?

Secretary DOLE. That's right. HHS, again, has the lead on this. Their guidelines came out yesterday. And they indeed will provide, in terms of certification of these labs, the highest of quality assurance programs, as well as particular requirements—technical requirements for individual lab personnel.

We will follow the DOD process here until the HHS guidelines are in place. But indeed, that very definitely is going to be a factor. And we are going for the highest quality assurance, as well as individual standards.

Senator ROCKEFELLER. There was a June 20th, 1986 report by a House civil service committee saying at that time your Department was considering allowing testing by those who were not licensed.

I assume that's history.

Secretary DOLE. Yes, indeed.

Senator ROCKEFELLER. If it were ever true, it will never be true again.

Secretary DOLE. That's right.

Senator ROCKEFELLER. All right. Another question, on the matter of cost.

I am also troubled in terms of testing on a broad basis across the Federal Government. I'm troubled by constitutional issues. On the other hand, I'm very much troubled by matters of national security sensitivity, and the growing onslaught of drugs.

With respect to costs, I think I read somewhere that it cost a billion dollars to test a million Federal employees once. As we know, if you test employees once, it doesn't give you absolute proof. You've got to get into the second.

Now, I don't want you to either argue or agree with those figures.

Secretary DOLE. I can give you some examples of Coast Guard costs, if you would like to have them.

Senator ROCKEFELLER. I'd be glad to have those. I'd like to know what you think we're talking about in the way of cost in terms of what these bills contemplate?

Secretary DOLE. Well, now, I can't estimate in terms of these bills. I can say as far as the DOT testing program, which we anticipate covers overall about 26,500 employees.

We're looking at probably somewhat in excess of $3 million.

Senator ROCKEFELLER. So that's the first and second tests?

Secretary DOLE. That's right.

Senator ROCKEFELLER. So that would be the assumption of the finding on the first test, and then—

Secretary DOLE. And the confirmation, exactly. Plus the rehabilitation counselling, having a system set up, which is already in place, by the way.

Senator ROCKEFELLER. Of $3 million?

Secretary DOLE. That's right. I'd say $3 to $5 million.

Senator ROCKEFELLER. That's a very reasonable figure.

Secretary DOLE. We anticipate absorbing that cost.

Now, when you're talking about rehabilitation, for example, for cocaine use, obviously that is a much more involved, much more expensive process, which we would not be able to provide.

That is where we are working with OPM to try to encourage insurance carriers to provide further coverage.

Senator ROCKEFELLER. Am I approximately right, Secretary Dole, in thinking that the first less accurate test can be done for around $25 or so and that the highly accurate one, which I'm told can be 99 percent accurate, would cost about $100 or $150.

Secretary DOLE. Well, as far as Coast Guard and FAA, we would have a large number of tests, of course. So you would have a discount on that. But about $18 to $25, plus another $15 for handling charges, and items of that sort.

And then, in addition to that, the cost for the rehabilitation and counselling. That has been the average.

Senator ROCKEFELLER. Thank you, Madam Secretary.

The CHAIRMAN. Thank you very much. Senator Ford?

Senator FORD. I have no questions, Mr. Chairman. I understand that those questions that I would have asked have already been asked. And I will read the record. Thank you.

The CHAIRMAN. Good. We have a chance for a second round. We don't get you very often, Madam Secretary. You're our most important witness. You've got experience, and you've got the responsibility.

Let me ask right out of the blue with respect to the right of privacy. I can't understand it.

We in the Congress all have rights of privacy which we give up when we come into public office. And we all have public responsibilities.

Now, I'm really concerned, specifically and then generally.

Specifically, we've got a public railroad engine going down a public railroad track operated by a public railroad engineer whose on the public payroll. Then organized labor, representing the engineer paid by public fund, begins to shout about rights of privacy.

Isn't the union the entity that furnished this particular engineer?

Secretary DOLE. Yes.

The CHAIRMAN. Well, if they had some public responsibility, maybe they wouldn't be shouting that. Does Conrail intend to sue the union for furnishing a drunk driver? And why not?

We've got to fix some responsibility in this society. I think if I can only employ a union engineer, then there's got to be some responsibility within the union itself to make sure they furnish competent engineers.

And amidst all the other talents including experience, good eyesight, physical, muscular reflexes, of that they also be sober, and not have a track record of reckless driving.

What is your comment?

Secretary DOLE. Well, let me say first of all that I have called on the unions, and I would like to do so once again today to work with me rather than in a confrontational status. Right now, literally as we speak, we're being sued over the FRA rule which gives us the authority to test after this recent tragic accident.

The CHAIRMAN. Did you counter sue them? Who's suing you, the union?

Secretary DOLE. Yes. Now, I am calling on the unions to work with me, because we are trying to help the union employees.

The CHAIRMAN. That's like us calling on the Japanese, Madam Secretary, to work with us on trade.

You've got to specific in this life of ours.

Secretary DOLE. Well, we're trying to protect—we're trying to help the individual employee and we're trying to protect the travelling public.

The CHAIRMAN. And don't you protect that travelling public when—you require those unions to be responsible with respect to their membership. If you establish that responsibility, they wouldn't be running unchecked; they'd be worried. It would then be their responsibility.

Don't you think there's a responsibility on behalf of the union to furnish a competent engineer and a sober one?

Secretary DOLE. Well, yes, I certainly do. And let me say that as far as accidents over the last three years, we find in no investigation that there's a lack of skill.

In other words, in the last three years, in all the investigations, no lack of skill has been causative. They're well trained, they're competent, in terms of their skills.

The human error comes from other sources, as we're discussing today.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. Mr. Chairman, thank you.

Madam Secretary, two questions relating to the scope of the legislation. The bills that have been introduced include alcohol under the definition.

In other words, these bills would relate to testing for both alcohol and drugs.

Is that your view that the legislation should include alcohol as well as drugs?

Secretary DOLE. I would think so. I've not particularly focussed on it from that standpoint, but I see no reason why it shouldn't.

Senator DANFORTH. And it would be testing for a .04 blood alcohol content?

Secretary DOLE. Well, now—yes, yes. We have .04 in the rail area as well as in the aviation area.

Senator DANFORTH. You might give some thought to it. I frankly hadn't focussed on it particularly. I mean, my attention had been on the drug problem in this legislation.

But the way it's drafted, it does include alcohol as well as drugs. And I think it deserves some attention.

Second, the legislation relates to air transportation and rail transportation, but not to bus and truck. The reason that trucks were excluded was just a practical question, how do you do it?

Secretary DOLE. Right.

Senator DANFORTH. With the owner-operators on the road, there's no sort of central way of running the test. It would seem that that problem, if there is a problem with trucks, would not exist for buses.

Would you agree with that?

Secretary DOLE. I would think that's true. We are looking at both in terms of asking the questions on random testing in our ANPRM.

And the feasibility question, as I have focussed on it, is primarily with regard to maritime, those on the seas; with regard to owner-operators, of which there are about 300,000 owner-operators; and general aviation.

And I think there is a feasibility problem in those areas, which we have to work through.

Senator DANFORTH. Would you, again, give some thought as to the scope of the legislation with respect to various modes of transportation and feasibility?

Secretary DOLE. Very definitely. Of extending it beyond air and rail.

Senator DANFORTH. It would seem to me that clearly it should include intercity buses. But should it include these other modes of transportation?

And how we should write the legislation? Maybe it's efficient for us just to authorize you to promulgate regulations if they can be promulgated.

Secretary DOLE. Very good. I'd be happy to work with you on that.

Senator DANFORTH. Thank you.

Secretary DOLE. I'd just mention one other thing. We do have an NPRM on commercial motor vehicles. We're drafting an NPRM for hazardous materials drivers. I think that's another specific area that needs some careful thought, carrying hazardous materials.

Senator DANFORTH. I think what we should do, if we're going to do this, we should try to do it right. And if you could kind of go down a checklist——

Secretary DOLE. Absolutely.

Senator DANFORTH [continuing]. And make suggestions as to how the legislation should be drafted.

Secretary DOLE. Fine.

Senator DANFORTH. Just one final question. A lot of people think that mandatory testing could be used to pick on certain employees whom their employers don't like.

Do you think that there's any reason for that concern?

Secretary DOLE. I don't anticipate that that would be a problem. And I think that can certainly be dealt with as we put together the program and the way it would work.

The specifics, and this is one of the areas I was concerned about, the questions that you asked me, it's hard for me to answer specifically on the procedures today with regard to the regulated areas, because we'll work it all out in a rulemaking.

But I would think that, yes, that can be handled.

Senator DANFORTH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Breaux?

Senator BREAUX. I want to pass right now, if that's all right, Mr. Chairman?

The CHAIRMAN. Yes, surely. Senator Exon? Jim's gone, excuse me. Senator Pressler?

Senator PRESSLER. I think all of my questions have been asked. But let me ask you, Madam Secretary, we've talked about drugs and alcohol a great deal.

There are other areas that have been mentioned, such as employees whose eyesight might change, or muscular reaction and so forth.

Are we doing enough to test and retest these people every year who are operating these airplanes, trains, and so forth? Aside from drugs and alcohol, should this legislation be expanded?

Would you recommend expanding this legislation to tougher annual physicals and so forth than we now have?

Secretary **Dole**. The commercial pilots are required every six months to have physicals, so I think that is clearly covered already.

Senator **Pressler**. And what about trains?

Secretary **Dole**. I think those other areas could be covered in physical exams, without legislation.

I don't see a need to extend it.

Senator **Pressler**. Now, Madam Secretary, what if an employee is found to have several speeding tickets in their private life, that is, driving their private automobile, or traffic violations?

Are they required to report these on an annual basis? Or is that a completely separate matter?

Let's say we had a train crash, and it was discovered that the driver had had six speeding tickets in his private life in the last year. It's kind of hard to completely control what people do in their private life, but is there any check on that?

I'm sure that the public would be outraged to read that someone was operating a train, even though he met all the requirements of operating the train, if he had traffic violations in his own car. If it was part of a pattern, does that come forward?

Secretary **Dole**. Well, as far as, let's say, driving under the influence, conviction for driving under the influence, certainly that not only could call forth penalties, but also revocation or suspension of the license.

Senator **Pressler**. Okay, what about a person who operates a train? If he were found driving under the influence, his private car in his own time? What would be the process?

Secretary **Dole**. First of all, we are seeking—we've just sent the legislation to you today—to get authority to assess penalties, sanctions, over rail employees directly.

The Rail Safety Act does not give us that authority, only over employers, not employees.

Senator **Pressler**. So you would like that authority?

Secretary **Dole**. Yes. And to ensure that we're doing everything we can, for example, with regard to tampering with safety devices on locomotives. We can't get directly at that now, because we don't have the authority to sanction employees.

Senator **Pressler**. Okay, thank you. Well, I strongly support such legislation, and I think the public does. And I hope the unions will change their position and support, because I think it's in everybody's interest.

Thank you very much, Madam Secretary.

The **Chairman**. Senator Breaux?

Senator **Breaux**. Thank you, Mr. Chairman, and I apologize for being late.

Let me thank the Secretary for her presentation. You're proceeding through the department on a rulemaking procedure with regard to drug testing.

The Chairman of the Committee and Senator Danforth have introduced legislation, and I don't know whether you commented on the Department's position on either the Danforth or the Chairman's approach?

Secretary DOLE. We do support very definitely the legislation in both cases. I mentioned a few minor points where we see a need for some technical amendments.

And I look forward to working with you on that, as well as working with the Committee on the privacy issue, and whether or not the extent of the legislation should be broadened to trucking and bus areas.

Senator BREAUX. As we move down these parallel paths, do you see any problems, I mean with your rulemaking procedure?

Secretary DOLE. No, I do not. In fact, I think it's excellent that you've moving forward. Because you strengthen my hand; no question about it. The fact that you mandate that we do this will very definitely help us when we get that inevitable legal challenge.

Senator BREAUX. Some arguments that we'll have by some who will be subject to the test will be that they're already being tested. Commercial airline pilots have to take a physical every six months. So they're already being covered by this. And they don't need legislation. They don't need more testing.

What's the response of the Secretary to that?

Secretary DOLE. I think that we have all been sensitized over the past several years to the fact that the problem of drugs is prevalent throughout our society.

And there's certainly nothing to indicate that transportation employees, either within the Department, or in our regulated industries, are exempt from this problem.

We have the highest trust in our hands, the highest kind of responsibility in terms of ensuring that people safely reach their destinations.

And I cannot imagine an area where the choice to use drugs could have a more disastrous effect than in the transportation system.

We also have some specific examples which we discussed earlier.

Senator BREAUX. I thank the Secretary for her comments. My only comment is that we already test these individuals. They will come to the committee and say, we don't want to be subject to tests, because we're already tested.

They have physical tests. They have simulator tests. They have competency tests. They have skill tests.

I for one, think that part of that procedure should also include the ability to determine that that person, in addition to being physically competent, is also mentally competent.

And I think that we're moving in the right direction. I applaud the Chairman.

Furthermore, it has to be random. If I know I've got to take a test in 12 months, I can get in pretty good shape for the test. But if I don't know when that test is going to occur, I could not prepare in advance. I think it gives you a better indication.

Secretary Dole. That's the thing. If testing is going to be just at your annual physical or whatever, obviously, you can prepare for that.

So random testing is ultimately the best way I think that we can ensure that we have a drug-free system.

Senator Breaux. We're doing it for basketball players. I think we ought to do it for airline pilots. It's much more important.

Thank you, Mr. Chairman.

The Chairman. Senator Exon, do you have some comments?

Senator Exon. Just a brief statement, Mr. Chairman, thank you very much.

Madam Secretary, could you expand just a little bit on your opening remarks with regard to the possible additional testing of truck drivers and bus drivers?

I took it from our earlier question and answer session that maybe you assumed that I felt that we should have another expanded bureaucracy with regard to having all truck drivers, bus drivers and all railroad engineers come under this new proposed law, thus, suggesting that they should be under the Federal bureaucracy and regulation.

I think that's not necessary, and I hope you would agree. I think we should keep the pilots as they are now, but the truck drivers are a whole other field that are basically under the jurisdiction of the states.

Futhermore, I'm wondering if we couldn't have some kind of an arrangement where in the unions would do the checking and the companies would have responsibilities? However, I wonder if that couldn't maybe be administered under the existing state laws especially with respect to truck and bus drivers. States are now the ones that issue the licenses.

Secretary Dole. Well, I think as we move through the rulemaking, we can examine all aspects of this.

The concern that I have is the feasibility of anyone doing it when you have 300,000 independent owner-operators. How do you do it? I mean, what is the procedure by which you test people who are owner-operators, or say, general aviation pilots?

It's a difficult area to figure out in terms of just how you would handle the testing. But I hope that we can work together to explore every possible way of finding an answer to this.

Senator Exon. I think we can. And I want to compliment you for the call that you put out to both management and labor together.

I think as someone else said a few moments ago, if we had a workable random testing program that would totally eliminate drug use and have a drug free transportation society in the United States, you know who would benefit most from that?

In my view, it would be the union members themselves, because they are the ones who are the first to arrive at the scene of an accident and the first ones to get killed.

So it seems to me that rather than have to be confrontational, that this is a time when we all recognize there's a problem, and it's a time to work together.

Secretary Dole. Join hands, exactly.

Senator Exon. We should forget some of the old harassment that we always go through on these matters.

Jim Exon has been a supporter of the unions all his life. They've always supported me, and I've always supported them.

However, the union members had better understand in this case, they have not been as forthcoming as I think they should.

If the union leadership is not forthcoming now, sooner or later the union membership is going to understand that what we're trying to do here is to provide a safer environment for the travelling public. I am sure this is the real desire of management, labor and the government

Let's work together.

Secretary DOLE. Absolutely. Amen.

The CHAIRMAN. Senator Ford.

Senator FORD. Thank you, Mr. Chairman.

Just briefly, in listing to what appears to be of far-reaching effect, train wrecks, airline problems, maybe hazardous waste transportation, et cetera; I think there's overwhelming evidence this morning that cigarette smoking would be better for your health. I just wanted to lay that one out, Mr. Chairman.

The CHAIRMAN. You're like Bossie the cow who gave a full pail, and now you've kicked it over.

Go ahead.

Senator FORD. Isn't it great to have a straight man on your committee?

Is there any higher or lower percentage of drug and alcohol abuse in the airlines or the railroad industry compared to the general public?

Secretary DOLE. I don't have any information on that.

Senator FORD. You wouldn't say that these two industries are less—is there any way that you might be able to find out whether that's true or not?

Secretary DOLE. No, we have very limited data. We don't know how conclusive it is.

Let me just say that while we may not have widespread evidence of a significant problem in these areas, once again I come back to the statement that we're all sensitive to the fact that this is pervasive throughout our society.

And I think we clearly have the nexus here to move and to try to eliminate the problem that we know does exist within the transportation industry. But I'd be glad to provide you with what we have.[1]

Senator FORD. I wish you would. I've got a sense that there's probably a lower percentage. I'm not sure that I'm right on that; I hope I am. But I have a feeling that with airline pilots, for instance, with the capabilities they have to have, and the six months exam, it's awfully hard to get something out of your system in weeks.

So I have a feeling that it might be a little less.

One other item that might become argumentative, as well as very expensive, and Senator Rockefeller alluded to that a few moments ago. This concerns the terminology of "false positive". This also concerns an individuals character possibly being damaged.

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[1] See p. 26.

As I understand it, the first initial test may be anywhere from $15 to $25. Then if something positive is found, or if false positive is determined, then the comprehensive test which follows will be more costly.

Who pays for these tests?

Secretary DOLE. First of all, let me talk about the Department's testing program. The cast will be absorbed by the government. And our figures show, for both tests, $18 to $25, but that's with a volume discount in FAA and Coast Guard testing.

Senator FORD. Your proposal means that the government will pay for all random testing?

Secretary DOLE. Within the government for DOT employees?

Senator FORD. Oh, just with the employees, I understand that. But we're getting ready to mandate a lot of things outside of government.

Secretary DOLE. Right. That will have to be worked out as we move through the rulemaking process. That's not clear yet, but I assume that that will probably—well, let's leave that question for now.

We're just at the point of starting on the rulemakings.

Senator FORD. I don't want to walk off from that, Madam Secretary. Because it could be one of the most controversial parts. How much will it cost? Will you increase the union dues for a union member to have to pay for his own test? Will you be imposing this on industry?

Secretary DOLE. Well, I would assume that it would be the industry. But we've just not worked through the details, because we do have rulemakings that will look at all aspects of this.

And we'll be asking people to comment, labor, the companies, et cetera.

Senator FORD. Well, I notice here two or three years ago, we were pushed awfully hard for polygraph tests for new employees.

I think a recent study that no one I think has challenged says that it's not effective. Therefore, they've decided not to use anymore of those tests, unless you absolutely want to or the industry wants to. It hasn't been effective.

I wouldn't want to get into this especially if after two or three years and a lot of expense as well as mental anguish, that we find out it isn't effective.

So, I would be very hopeful that we move very cautiously before we make a determination that this is the move to take.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman. I just have one very brief question, and apologize if someone else had covered it already.

I think we're going to hear a lot of people who object to this, saying, the old adage, if it ain't broke, don't fix it.

I think they're going to come and say, that, we're policing ourselves. We have our own internal programs, and you don't need big government to come in and do what we're already taking care of.

Is there evidence from the Department's standpoint that justifies a need for rulemaking to require mandatory random testing or for legislation, as the Chairman and Senator Danforth has promoted?

Is there evidence that it's needed? Is there a record that's there that says, it has to be done legislatively or through the rulemaking process? It's not being adequately done now?

Secretary DOLE. Well, I have mentioned instances where we've seen dramatic decreases—Coast Guard has data that shows that usage dropped from 10 percent to 3 percent.

Navy has evidence that in one year under random testing usage dropped from 10 to 5 percent.

We have evidence that between 1981 and 1986, with commercial marine companies, there were 134 cases of drug abuse. The railroad rule—we just had a hearing on that—we've had 11 months with our alcohol and drug rule for railroads, and it indicates that with 759 people who were tested after accident this last year, that there was 3.8 percent drug usage; 5.0 percent overall, including the alcohol aspects as well.

Senator BREAUX. Any information on the airline industry?

Secretary DOLE. Airlines—do you want to respond?

Mr. SCOCOZZA. Senator, the industry provided information to us in the context of developing an ANPRM for the aviation industry. I don't have the exact numbers, but I do know they were relatively low. Somewhere in the vicinity of the numbers the Secretary is talking about.

Senator BREAUX. Would that not indicate their argument, that it ain't broke, don't fix it, applies?

Secretary DOLE. No.

Mr. SCOCOZZA. Well, if it exists, it's a problem, Senator, no matter how small it is.

Secretary DOLE. It certainly is.

Senator BREAUX. Thank you, Mr. Chairman.

The CHAIRMAN. Very good. Madam Secretary, we appreciate you and your associates this morning.

Secretary DOLE. Look forward to working with you.

The CHAIRMAN. Thank you, ma'am.

We'll now move to the next panel.

Senator DANFORTH. Mr. Chairman, while the panel is coming forward, could I read into the record two paragraphs from a newspaper article.

The CHAIRMAN. I wish you would hold up so we can hear it.

[Pause.]

The CHAIRMAN. Let's have order, please. Senator Danforth has a section that should be included in the record.

Senator Danforth.

Senator DANFORTH. Thank you very much. I would just like to have an article in the February 19, 1987 edition of the *Washington Post*, be included in the record.

The CHAIRMAN. I thank you, and it will be included.

[The article follows:]

[From the Washington Post, Feb. 19, 1987]

RAILROAD DRUG TESTS CALLED DETERRENT

(By John Lancaster)

The Federal Railroad Administration said yesterday that, in the year since it imposed drug and alcohol testing for railroad employes, 5 percent of those involved in significant accidents showed traces of illegal drugs or alcohol in their blood or urine.

Since last February, 759 railroad employes have submitted to tests for drugs and alcohol after being involved in accidents, according to the FRA. The data shows that 29, or 3.8 percent, tested positive for marijuana, cocaine, or methamphetamines. Nine persons, or 1.2 percent, showed traces of alcohol in their bodies.

Railroad Administrator John Riley said the results show "without question" that the testing program is having a deterrent effect. In past years, autopsies have revealed the presence of drugs or alcohol in as many as 16 percent of the train crew members killed in railroad accidents.

Riley, who appeared here yesterday at an informal hearing on drug and alcohol abuse on railroads, said the prevalence of drugs and alcohol remains unacceptably high in an industry with so much potential for catastrophe.

"It certainly is less than many people thought would be found in the railroad industry," he said. "But we still have quite a long way to go."

The issue of drug testing for transportation workers has gained new urgency since the collision Jan. 4 of a Conrail train and an Amtrak passenger train near Baltimore. Tests showed that the blood of both the engineer and brakeman of the Conrail train contained traces of marijuana.

FRA safety rules require drug and alcohol tests of all train operators after any accident that causes a fatality, an injury, an evacuation due to the release of hazardous materials, or more than $500,000 in property damage. The agency also requires drug tests for all job applicants in the railroad industry, and authorizes supervisors to test employes if they have "reasonable cause" to suspect drug use.

Yesterday's hearing was held to solicit comments from railroad officials and labor representatives on ways the rule could be improved.

Since the FRA's rule went into effect last February, drug and alcohol tests have been administered to railroad employes involved in 175 accidents. Marijuana byproducts appeared in 27 tests, while cocaine byproducts showed up in 11. Several people tested positive for both substances.

Marijuana is known to linger in the urine for weeks after use, and officials acknowledge that drug testing may be an inexact science. The FRA said that a positive test result does not necessarily mean that an individual was impaired or caused an accident.

Last July, for example, a coal train struck the rear of another train near Omaha, killing a brakeman in a caboose and injuring several other railroad workers. According to the FRA data released yesterday, a train dispatcher involved in the accident tested positive for marijuana.

But the dispatcher's actions had nothing to do with the cause of the accident, a Union Pacific spokesman said yesterday. The spokesman said the dispatcher was suspended after the accident, but that he has returned to duty after completing a drug rehabilitation program.

Railroad investigators have not issued formal conclusions for any of the accidents.

Riley said yesterday that, in some cases, as much as eight hours had elapsed between the accident and the time urine and blood samples were collected. Under those circumstances, it is nearly impossible for investigators to determine whether a train operator was impaired at the time of the accident, he said.

Riley also said lab results indicate that some employes have tampered with urine samples by diluting them with water. He suggested that better supervision could eliminate that problem.

Railroad executives testified that they support the drug-testing program, but that accurate and prompt testing after accidents is sometimes difficult.

Bill Johnston, a vice president of the Association of American Railroads, said that many accidents take place in remote areas, where qualified laboratory personnel often are hours away.

Larry Mann, an attorney for an association of rail labor unions, said he was concerned about the accuracy of drug tests. He said he could support some form of random testing if it included both management and union members.

The CHAIRMAN. We welcome this distinguished panel. We have Mr. James Landry, the Vice President of the Air Transport Association; Mr. Dempsey of the Association of American Railroads; Ms. Lana Batts of the American Trucking Associations; and Mr. Douglas Turner of the American Bus Association.

Lady and gentlemen, your statements are extensive, and they are appreciated. I am going to include these statements in the record in their entirety. In the interest of time so we can hear more informally the emphasis that you would place on your points to be made before the committee this morning, I would ask that you please summarize them.

Mr. Landry, we will call on you first.

STATEMENTS OF JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION; LANA BATTS, VICE PRESIDENT OF POLICY, AMERICAN TRUCKING ASSOCIATIONS; DOUGLAS TURNER, CHAIRMAN, SAFETY COMMITTEE, AMERICAN BUS ASSOCIATION; AND WILLIAM H. DEMPSEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS

Mr. **Landry**. Thank you, Mr. Chairman. My name is James E. Landry, and I am Senior Vice President and General Counsel of the Air Transport Association of America. Our organization represents U.S. scheduled airlines, both passenger and cargo carriers. We hope that our testimony here today will lead this committee to support a Federal air regulation which gives airline employers the tools they need to enforce company safety rules and which at the same time adequately protects the interests of employees in their privacy and in their jobs. We firmly believe that such a regulation can be promulgated by the FAA.

In our prepared statement, we have described the intense carrier interest at the highest executive level in steps to promote a drug-free work force. Attached to that statement is an outline of a draft regulation which we put together in the interest of enhancing aviation safety.

The ATA proposal would require each Part 121 and Part 135 air carrier to develop a comprehensive written program designed to promote a drug/alcohol-free work force. Covered employees would include certificated and noncertificated crew members, mechanics and any other employee whose duties affect or could affect the safety of an aircraft, passengers or employees.

Carrier programs would be required to incorporate certain mandatory elements. These elements are pre-employment screening, post-accident and post-safety incident testing of employees, testing of employees on a reasonable suspicion basis where such suspicion can be particularized and reasonably articulated, and one opportunity for rehabilitation for employees who voluntarily admit to a drug or alcohol problem and who are not already in a job jeopardy status. Employees whose drug or alcohol use is discovered by testing, and employees who have violated other company rules and who are in a job jeopardy status, would not be entitled to volunteer for a rehabilitation program.

Air carriers would file their programs with the FAA, which would have the responsbility of insuring that each program contains these minimum requirements. If the FAA does not disapprove a submitted program, that program would be deemed to be accepted.

A very important aspect of our proposal is that any conflicting State or local law would be preempted. We firmly believe that there must be a single national regulation with respect to the control of drugs and alcohol in aviation. Currently there are at least 17 states that are considering legislation on this topic. Airlines cannot even attempt to deal with employee drug and alcohol use if they must satisfy varying requirements imposed by juridictions which have differing views on the rights of employers to test their employees. Federal preemption is absolutely required.

The ATA proposal does not address the question of random testing or the frequency of testing. At the time our proposal was developed, it was thought that random testing was an issue which should be left up to the individual discretion of each carrier; however, in light of Secretary Dole's recent announcement concerning random drug testing, we have had to reevaluate our position.

With the exception of perhaps one or two carriers, our members support the use of random drug testing. Many of our carriers believe that a random testing program properly constructed and applied is the most effective deterrent to illicit drug use and the most effective means of motivating employees with problems to seek the help they need. This is especially true if discovery by testing may lead to immediate discharge.

On the question of whether random drug testing should be mandated by regulation or statute or whether random drug testing should be expressly permitted by regulation or statute, however, our members are divided. There are advantages and disadvantages to each position, and our member carriers at this point in time do not agree as to which would be the best way to proceed. Some carriers strongly feel that, absent a governmental mandate for random testing, its inclusion as an option for individual carriers will be illusory at best.

Mr. Chairman, I do have about one more minute.

The CHAIRMAN. Go right ahead.

Mr. LANDRY. In other words, it simply will not be implemented if it is not Federally ordered. Others feel a Federal mandate would entail interminable court challenges. Still others feel it is an area best left to the individual employing airline, not only to reduce litigation but also to maximize the knowledgeable employer's flexibility in dealing with its individual work force.

Our proposal also does not address the issue of sanctions for rule violations. Generally speaking, our members would prefer to see stiffer rather than weaker sanctions imposed for violating company drug and alcohol rules. Carriers must have the ability to discharge employees who disregard safety rules and whose continued employment in the mind of the carriers would jeopardize safety.

Our members believe, however, that the imposition of sanctions is a matter which is best left to the complete discretion of each carrier, because we are dealing with people, not equipment. In the total universe of human problems and relations, sanctions can be imposed only on a case-by-case basis within the framework of established company policy.

ATA believes that its approach to the issue of controlling drug and alcohol use in commercial aviation merits FAA's adoption by final rule for many reasons which we more fully explore in our prepared statement.

We respectfully urge this committee, Mr. Chairman, to support the adoption of a regulation by the FAA encompassing the minimum requirements contained in the ATA draft proposal which I have described.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION OF AMERICA

Good morning. My name is James E. Landry. I am senior vice president and general counsel of the Air Transport Association of America. Our organization represents U.S. scheduled airlines, both passenger and cargo carriers. ATA members account for approximately 90 percent of the revenue passenger miles flown by the U.S. airline industry, and the same percentage of cargo service. In 1986, U.S. scheduled airlines employed more than 412,000 people.

ATA appreciates the opportunity to participate in this committee's examination of the impact of alcohol and drug use on airline and rail transportation. It is gratifying to see this committee continue its efforts to deal with this vitally important, albeit difficult and complex, issue. We hope that our testimony here today will lead this committee to support a Federal air regulation which gives airline employers the tools they need to enforce company safety rules, and which at the same time adequately protects the interests of employees in their privacy and in their jobs. We firmly believe that such a regulation can be promulgated by the FAA.

As I testified before this committee last year, our member airlines have been concerned for some time about the spreading drug problem in our society. Nearly a year and a half ago, our members—at the highest executive level—began discussing this problem as it affects commercial aviation and what could be done to achieve a drug-free work force. Those discussions led to meetings with the Administrator of the Federal Railroad Administration and his senior staff about the FRA's drug and alcohol rules: with Peter Bensinger, former head of the Drug Enforcement Administration and now a consultant in this field: and with many other sources from different industries—all with a view toward developing a comprehensive regulatory proposal designed to promote a drug-free work force in commercial aviation. By last spring, we had put together the outline of a draft regulation which we believe will enhance aviation safety. A copy of that draft proposal is attached to our prepared statement as exhibit 1.

Once we had developed an outline, we felt that it was important to discuss this matter with union representatives. We spent several hours discussing our proposal with the Air Line Pilots Association (ALPA), and we also briefed the Association of Flight Attendants and the International Association of Machinists and Areospace Engineers.

Much to ALPA's credit, and very much due to the efforts of Captain Stone and Dr. Masters, ALPA undertook its own study of this problem and of possible solutions.

We believe that our regulatory proposal fairly balances: (1) the public demand for a drug-alcohol free aviation work force against the concerns of airline employees to be free from excessive, embarassing invasions of privacy, and (2) the concerns of air carriers that this matter be addressed in a cost-effective manner without unnecessary governmental intrusion and regulation.

The ATA proposal would require each part 121 and part 135 air carrier to develop a comprehensive written program designed to promote a drug/alcohol free work force. Covered employees would include certificated and non-certificated crewmembers, mechanics, and any other employee whose duties affect or could affect the safety of an aircraft, passengers or employees.

Carrier programs would be required to incorporate certain mandatory elements. These elements are: (A) pre-employment screening, (B) post-accident and post-"safety incident" testing of employees, (C) testing of employees on a "reasonable suspicion" basis where such suspicion can be particularized and reasonably articulated, and (C) not less than one opportunity for rehabilitation for employees who voluntarily admit to having a drug or alcohol problem and who are not already in a job jeopardy status. Employees whose drug or alcohol use is discovered by testing, and employees who have violated other company rules and who are in a job jeopardy status, would not be entitled to volunteer for a rehabilitation program. I will discuss the question of eligibility for rehabilitation in more detail in a moment.

Air carriers would file their programs with the FAA. The FAA would have the responsibility of ensuring that each program contains these minimum requirements. If the FAA does not disapprove a submitted program, that program would be deemed to be accepted.

A very important aspect of our proposal is that any conflicting state or local law would be preempted. We firmly believe that there must be a single, national regulation with respect to the control of drugs and alcohol. Currently, there are at least 17 States that are considering legislation on this topic. Airlines cannot even attempt to deal with employee drug and alcohol use if they must satisfy varying requirements imposed by jurisdictions which have differing views on the rights of employers to test their employees. Federal preemption is absolutely required.

The ATA proposal does not address the question of random testing, or the frequency of testing. At the time our proposal was developed, it was thought that random testing was an issue which should be left up to the individual discretion of each carrier. However, in light of Secretary Dole's recent announcement concerning random drug testing, we have had to re-evaluate our position.

With the exception of perhaps one or two carriers, our members support the us of random drug testing. Many of our carriers believe that a random testing program, properly constructed and applied, is the most effective deterrent to illicit drug use and the most effective means of motivating employees with problems to seek the help they need. This is especially true if discovery by testing may lead to immediate discharge.

However, on the question of whether random drug testing should be mandated by regulation (or statute), or whether random drug testing should be expressly permitted by regulation (or statute), our members are divided. There are advantages and disadvantages to each position, and our member carriers, at this point in time, do not agree as to which would be the best way to proceed. Some carriers strongly feel that, absent a governmental mandate for random testing, its inclusion as an option for individual carriers will be illusory at best. In other words, it simply will not be implemented if it is not federally ordered. Others feel a Federal mandate would entail interminable court challenges; still others feel it is an area best left to the individual employing airline, not only to reduce litigation but also to maximize the knowledgeable employer's flexibility in dealing with its individual work force.

Our proposal does not address the issue of sanctions for rule violations. Generally speaking, our members would prefer to see stiffer, rather than weaker, sanctions imposed for violating company drug and alcohol rules. Carriers must have the ability to discharge employees who disregard safety rules and whose continued employment, in the minds of the carriers, would jeopardize safety. However, our members believe that the imposition of sanctions is a matter which is best left to the complete discretion of each carrier. Because we are dealing with people, not equipment, and the total universe of human problems and relations, sanctions can be imposed only on a case by case basis within the framework of established company policy.

ATA believes that its approach to the issue of controlling drug and alcohol use in commercial aviation merits FAA's adoption by final rule for many reasons. First, it *requires* carriers to use the most effective testing methods which have consistently withstood legal challenge. Thus far, courts have upheld federally required post-accident testing and reasonable suspicion testing. As I said earlier, we have not yet reached a consensus on the more controversial question of whether random testing should be mandated.

Second, this approach allows for differences among air carriers. This is not an issue which can be treated like a typical operating or maintenance safety regulation where uniformity is the only way to ensure compliance with safety requirements. Because of the many differences between carriers, such as size, location, internal management structure, labor relations, and historical company policies and philosophies, an extensive regulation with uniform detailed requirements would simply be inappropriate. The approach contained in the draft regulation, that of allowing each air carrier to construct its own program with certain minimal mandatory elements, will allow carriers with completely different circumstances to address this problem in a manner consistent with those circumstances, yet uniformly enhance aviation safety.

Mister Chairman, your bill, S. 362, would impose a periodic recurring testing program for both drugs and alcohol, requiring covered employees to be tested at least twice a year. When we developed our regulatory proposal, we considered this possibility but rejected it for several reasons.

First, we believe that such a condition of employment would have a dramatic and adverse impact upon the work environment and airline labor relations. Such a situation would be unhealthy for both the covered employees and the airlines.

Second, it would create a tremendous administrative burden on the airlines to keep track of the testing status of covered employees, certify to the FAA that all covered employees have been tested, and to maintain the necessary records for an indeterminate number of years.

Third, since today's popular drug—cocaine—stays in a person's system only for a few hours to a couple of days, the test can easily be circumvented. Abstinence from cocaine for a few days, or from marijuana for a few weeks, would allow a user to escape discovery easily.

Finally, given the lack of effectiveness of periodic recurring testing and its potential for disrupting the work environment, the cost to the airlines of maintaining such a program would be prohibitive. At a large carrier where perhaps 30,000 employees would be covered, anywhere from $1.2 million to $1.5 million annually would be spent on periodic testing alone. In light of the ease of circumvention, we do not believe that the results of such testing warrant this kind of expenditure.

S. 362 also would require airport security screening contractors to test their employees. The airlines have no objection to this requirement, so long as the airlines have no responsibility to ensure compliance by the contractors or to bear any of their costs.

In closing, I would like to address a question which you posed in your letter of invitation—under what circumstances should rehabilitation be offered—by describing for you a case currently wending its way through the courts.

In 1982, a first officer of a major U.S. airline flew from Las Vegas to San Francisco while legally intoxicated. In violation of the company's rule which prohibits any consumption of alcohol within 24 hours before a flight, this individual consumed a considerable amount of alcohol. Upon landing, he was given a blood alcohol test which established his intoxication. The individual was discharged in accordance with company policy.

The individual entered an alcohol rehabilitation program and was subsequently issued a special medical certificate by the FAA which permitted him to fly if monitored by both the airline and ALPA. On this basis, the individual sought, and obtained, an arbitration award which granted him reinstatement. The arbitration board found that the individual's prior work history, alcoholism and rehabilitation justified a reduction of the discharge penalty.

On the airline's complaint. The U.S. district court vacated the arbitration award. The court held that the arbitrator lacked jurisdiction over a discharge based on a violation of a safety rule (the 24 hour rule), and that public policy required reversal because the airline is statutorily obligated to perform its services with the highest possible degree of safety.

The U.S. court of appeals reversed the district court, finding that a discharge for violation of a company safety rule is subject to arbitration, and that the FAA—by issuing a conditional certificate to the pilot—had determined that public policy (safety) would not suffer by allowing the pilot to fly. The airline will soon be filing a petition for a writ of certiorari to the U.S. Supreme Court.

The point of describing this case to you is to illustrate that a fundamental conflict can arise between safety and rehabilitation: public policy—as reflected in the statutory requirement that airlines operate with the highest possible degree of safety—would dictate that few rehabilitated employees be entrusted with the lives of the flying public, while the goal of rehabilitation is to return employees to their prior positions as productive members of society. We believe that when the interests of public safety conflict with the interests of individual employees, public policy absolutely requires that the concern for safety prevail.

This case illustrates the danger of considering rehabilitation as *carte blanche* for any employee who has violated a company safety rule to resume prior duties. The promotion of safety requires that carries have the ability to enforce their rules so that standards remain as high as possible. Yet decisions like this one undercut, and even prevent, a carrier from operating with what it judges to be the highest degree of safety, thereby creating a serious problem for the airlines.

There must be an easily identifiable standard—a clear line—recognizable by both management and labor. Such a standard serves two purposes. First, it ensures management's ability to set and maintain the highest possible safety standards to meet its statutory obligations. Second, such a standard should encourage those who have become drug or alcohol dependent—or simply users—to seek the help they need before they cross the line that can ruin their careers. For an employee with a substance abuse problem, there is no incentive to seek help unless he/she knows that continued substance abuse can and will result in the loss of his/her job. This situation—so aptly illustrated by the case I've just talked about—must be reversed.

What should that standard be? ATA believes that the critical factor to focus on is the judgment of the employee. If an employee seeks help before violating a company safety rule or before being identified by means of a company-required drug or alcohol test, then that employee—even though possibly suffering from a serious disease—has shown the type of judgment which should be rewarded by the continued confidence of the carrier. Only in these cases should rehabilitation be offered. On the other hand, if an employee has become so blinded by his dependency that he is willing to violate a safety rule or an FAA regulation and place the lives of the public at risk, then he has crossed the line beyond which his judgment cannot be trusted. In those cases, rehabilitation should not be available as a means of returning to work. This we believe, is a standard which will promote both safety and rehabilitation.

Mister Chairman, the airline industry respectfully urges this committee to support the adoption of a regulation by the FAA which encompasses the minimum requirements contained in the ATA draft proposal. Thank you for this timely opportunity to present these views on a matter of critical importance to all of us. I will be pleased to answer any questions you may have.

[The following information was subsequently received for the record:]

Air Transport Association of America,
Washington, DC, March 23, 1987.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation,
Russell Senate Office Bldg., Washington, DC.

Dear Senator Hollings: The following is our response to the questions raised by Senator Rockefeller, attached to your letter of March 12, 1987.

Question: 1. I would like to know whether your positions [on random testing] are arrived at by your assessment of how effective such a program would be—both as a deterrent and as a method of catching actual drug and alcohol abusers, or by the relative ability of your industry to handle the financial burden of the drug testing program and rehabilitation program?

Our position on random drug testing is that it is an effective deterrent—perhaps the most effective deterrent—against drug use and alcohol abuse among employees. Although drug users will be identified, that is secondary in importance. We do not believe that the focus of drug testing in the private sector should be on "catching" drug users and alcohol abusers. Private sector employers should not be viewed as law enforcement officials. Rather, our task, as employers in the transportation industry, is to protect the safety of public travellers by making it as uninviting as possible for our employees to engage in unlawful drug or alcohol use. We believe random testing is a very effective tool for accomplishing this purpose.

All of this is not to say, however, that the airlines are not concerned about the cost of testing programs. Industry-wide, the cost of testing programs will run into the millions of dollars on an annual basis, and our members are very sensitive to the potential for testing programs to become an unwarranted financial burden. Until our national drug problem abates, however, the risk of unlawful drug and alcohol use among airline employees with operational responsibilities makes drug testing programs a necessity.

Question 2. For each of you, could you provide the committee now, or in writing, with information on the estimated costs of drugs and alcohol testing programs on your respective businesses?

Testing costs will vary greatly, depending on the number of employees an airline will test. One carrier reported that it currently pays $20 per test for initial tests, and $60-$65 for confirmatory tests. Another carrier reported that it spends $10 to $20 per employee per test, including confirmatory tests. In 1986, airline industry employment was in excess of 416,000 people. If only ten percent of those employees are tested on an annual basis at an average cost of $60.00 per person, then the annual cost would be nearly 2.5 million dollars for testing alone. Added to this figure would be the cost to airlines of operating their Employee Assistance Programs, which include rehabilitation services. Estimates to operate these programs industry-wide range from 6 to 10 million dollars per year.

Question 3. To what extent is the position you have taken affected by your existing labor relationships and experience with grievance procedures, etc.? To what extent do you think your employees would agree to more frequent or random testing if there is a policy of rehabilitation fostered rather than dismissal?

Our member carriers' positions have been affected to the extent that, with few exceptions, labor organizations have opposed the implementation of any management-initiated policy authorizing drug or alcohol testing. For example, one carrier's unions recently attempted to block—unsuccessfully—that carrier's implementation of its new drug testing policy, even though it does not include random testing.

With respect to "fostering" a policy of rehabilitation, as opposed to dismissal, we wish to make perfectly clear our position. The nation's scheduled airlines believe that rehabilitation must be held out as a privilege awarded only to those who voluntarily seek help before being caught violating company safety rules or controlling regulations. If the airlines do not have the authority to discipline (up to and including discharge) employees who test positive for unlawful drug or alcohol use, then there will be no incentive for employees with problems to seek the help they need. Employees must know that if they seek help, they can get it. But if they have not come forward voluntarily, and they are identified, they could lose their jobs.

I trust that I have fully answered Senator Rockefeller's questions. If I can be of further assistance, please do not hesitate to call upon me.

Sincerely,

James E. Landry,
Senior Vice President and
General Counsel.

The Chairman. Thank you, Mr. Landry.

Ms. Batts.

Ms. Batts. Mr. Chairman, it is a pleasure to be here today. I represent the American Trucking Associations, and we welcome the opportunity to discuss this very important issue.

In the trucking industry, which is made up of 214,000 companies and employs millions of drivers, it is inevitable that a small percentage of drivers abuse alcohol and drugs. Summarizing from my statement, I would like to outline some of the actions ATA believes are necessary to detect those users and to get them off the road, now.

First, we believe that there must be a DOT requirement for drug screening as a part of the current biennual medical examination requirements. ATA has petitioned DOT to require drug screening for pre-employment and for the periodic physical examinations. This requirement would be applicable to all truck drivers regardless of the commodities being transported.

If the drug screening requirement is adopted, the aggregate cost would be more than $84 million; therefore, to require drug screening more frequently than every two years would be prohibitively expensive. In addition, we do not foresee any safety benefits from more frequent testing.

The trucking industry, however, does not support any requirement for advance notification of drug screening. Detection is the most important first step to the protection of the public. Advance notice of drug testing works against effective drug control programs.

Unlike engineers on trains or pilots of planes, truck drivers are constantly subject to the monitoring by public officials. These officials usually have the authority to require drug tests for truck drivers if there is probable cause to believe that the driver is impaired by drugs or alcohol.

ATA supports such probable cause testing including testing following a truck accident if officials have probable cause to believe that the truck driver's ability was impaired by drugs or alcohol. We do not support, however, the requirement for drug testing of every truck driver after every accident. The incidence of drug-related accidents is low. This makes it impractical and an unnecessary burden on drivers and motor carriers to require drug testing after every accident.

Another reason for our opposition to drug testing after every truck accident is that, obviously, truck drivers are not at fault in all accidents. Car drivers have been found to be at fault three times as often as tractor-trailer drivers in car/truck accidents. If drug testing of truck drivers is required after every accident, then there must be similar testing for the drivers of all other vehicles involved.

Many motor carriers voluntarily conduct drug tests on drivers based on probable cause, but we do not believe it should be required by law. The reason is that the nature of the job takes drivers long distances from their employer. Frequently, it makes it impossible for the motor carriers to determine if there is a need to do such testing and for testing to be done in a timely manner. Again, let me repeat. We are talking about 214,000 companies employing 5.4 million drivers.

In summary, we do not support a requirement for selecting individuals for drug tests randomly and without probable cause. The relatively small number of truck accidents which might be attributed to drug use by truck drivers indicates that random testing would not contribute to safety. There are many ongoing programs, however, in the trucking industry to help motor carriers understand and cope with drug problems.

First, ATA is working with the National Association of Truck Stop Operators to develop a program to reduce or eliminate the sale of drugs at truck stops. In addition, many motor carriers have voluntarily implemented screening programs for both job applicants and as a part of the physical examination, although again, remember, mandatory drug testing is not a part of the current DOT medical examination requirements.

Among job applicants, some carriers have found evidence of a high level of drug usage, especially in major metropolitan areas. For the protection of the motoring public, motor carriers are making every effort to determine these drug users so that they will not be permitted to operate in commercial vehicles.

Some carriers also report that the use of polygraph has been effective in the detection of drug users during the selection process and also in follow-up investigations where drugs have been found in vehicles or where use is suspected. We support the usage of polygraphs in our efforts to deter drug usage.

The question then becomes who hires the applicants who are rejected following the drug testing or polygraphs implemented by many companies? There is a strong possibility that, unfortunately, they are employed by other motor carriers who do not test for drugs.

In conclusion, therefore, it is obvious that we need to have a regulation which mandates drug tests for all truck drivers and applicants for driving jobs. The problem of drug usage in major metropolitan areas provides further justification for ATA's efforts to have DOT eliminate the commercial zone exemption for safety regulations. It allows persons to drive commercial vehicles even though they might not be medically qualified to do so. The exemption makes it easier for drug users in the trucking industry to escape detection.

Mr. Chairman, that concludes my remarks. Thank you for giving us the opportunity to testify, and I look forward to your questions.

[The statement follows:]

STATEMENT OF LANA R. BATTS, VICE PRESIDENT OF POLICY, AMERICAN TRUCKING ASSOCIATION, INC.

INTRODUCTION AND EXECUTIVE SUMMARY

I am Lana R. Batts, Vice President of Policy of the American Trucking Associations, Inc. (ATA). I welcome this opportunity to discuss with the Committee on Commerce, Science and Transportation actions being taken by the trucking industry to deal with the problem of substance abuse, and of additional actions that are needed for effective control of the problem.

I am submitting this statement on behalf of ATA, the national trade association of the trucking industry. Through its 51 affiliated trucking associations located in every state and the District of Columbia, 11 affiliated conferences, and several thousand individual motor carriers, ATA represents every type and class of motor carrier in the country: for-hire and private; regulated and exempt.

Our industry employs 7.4 million Americans, most of whom are drivers. Each year 5 million trucks log more than 138 billion miles. They have an overall safety record that is almost twice as good as that for automobiles. We recognize that with the large number of drivers employed in our industry it is inevitable that there will be a small percentage of substance abusers among them. We want such abusers off of the road for the protection of the public and the protection of other truck drivers.

To enhance our ability to detect those users now in our ranks and to more effectively screen job applicants for drug use, our industry has taken a number of positive actions:

We have petitioned the Department of Transportation to make drug screening a part of the preemployment and biennial physical examinations required of drivers by DOT;

As a result of an ATA petition, DOT adopted a more stringent rule under which a driver is deemed medically unqualified to drive if there is evidence of drug use;

ATA has petitioned DOT to require that commercial zone drivers must be subject to safety regulations, including rules prohibiting drug use;

ATA strongly endorses the tough penalties in the Commercial Motor Vehicle Safety Act of 1986 of 1-3 years disqualification for a first offense of driving a commercial vehicle while under the influence of drugs, with lifetime disqualification for a second offense or for use of a commercial vehicle for distribution of drugs.

ATA has proposed a disqualification period for job applicants and drivers who exhibit any indication of current drug use as a result of a drug screen, even though such usage may not have occurred on the job;

ATA supports drug tests based on "probable cause" determined by authorized regulatory officials and police officers:

At national safety meetings ATA has had special sessions on drug abuse control programs. State and Conference attiliates of ATA have had similar programs which have been highly successful;

ATA has promoted increased Federal funding to states for roadside safety inspections of vehicles and drivers, including monitoring to assure that truck drivers are not operating under the influence of illegal substances;

An ever increasing, number of motor carriers are voluntarily adopting effective drug screening programs to assure that their drivers are not using substances which impair their ability to drive safely;

ATA is developing a program to be carried out through truck stop organizations aimed at curbing drug trafficking at such establishments.

I recognize that it is inherent in the nature of a hearing such as this to focus on the abuse of drugs in transportation. However, I must point out that I have personally worked with many truck drivers, including participants in the ATA National Truck Driving Championships and the members of America's Road Team, a group of outstanding drivers serving as industry spokespersons for safety.

My father owned a trucking company, so I have been around trucks and truck drivers all my life. I am convinced that the majority of our drivers are not substance abusers. In fact, the truck accident summaries published by DOT's Office of Motor Carriers have never indicated widespread abuse of alcohol or other drugs in the trucking industry. To the extent that the problem exists, it is confined to a minority of drivers. They are the exception rather than the rule.

MEDICAL QUALIFICATIONS

In November, 1984, the DOT amended its rules to provide that a driver is medically unqualified for a current clinical diagnosis of a drug *dependence*. In the trucking industry view, the Department's action was wrong because determining that a driver has a current clinical diagnosis of drug dependence is a protracted process which allows unsafe drivers to continue to operate heavy vehicles and endanger other highway users.

ATA filed a petition for reconsideration in December, 1984 asking DOT to reinstate the provision that the driver is deemed medically unqualified on the basis of drug *use* alone. This can be determined by a one-time battery of tests rather than necessitating that tests be carried out over a long period to determine dependence on drugs.

ATA's petition was initially denied but eventually granted, effective June 12, 1986. The revision was a significant step to help remove those drivers who use drugs from the highways of America.

DRUG SCREENING

Periodic and preemployment testing

On May 30, 1986, American Trucking Associations petitioned DOT to institute a requirement for drug screening as a part of current medical examination requirements. Our proposal has not been adopted. Under ATA's petition, a requirement for drug screening would be applicable for preemployment and periodic physical examinations. *The requirement would not be limited to drivers of specified classes of hazardous materials, as proposed by DOT. It would be applicable to all truck drivers, regardless of the nature of the commodities being transported.*

The trucking industry also recommends that screening should be for use of drugs identified in the current provisions of the Federal Motor Carrier Safety Regulations. These include amphetamines, narcotics, and habit-forming drugs, and drugs and other substances listed in Schedule I of the Drug Enforcement Administration, which are illegal, have no accepted medical usage, and have been identified as creating potential safety problems.

Inclusion of other substances is not warranted because they have not been shown to create safety problems and they are commonly used for medicinal purposes. Drivers using them must be permitted to continue to drive if it has been determined that the driver's ability to operate safely is not impaired by such usage. Screening for these additional substances would not provide a safety benefit and would inordinately increase the cost of medical examinations and increase the time required to evaluate the findings.

While we support requirements for drug screening, it is imperative that such requirements must be economically feasible. Checks with a local clinic which performs DOT medical examinations and with motor carriers currently doing drug screening indicate that the cost of the basic drug screen (urinalysis) is approximately $15. The more sophisticated blood test regimen which is required to further evaluate an initial "positive" urinalysis is in the cost range or $60–$70.

For an estimated 5.4 million drivers that might become subject to a drug screening requirement, the aggregate cost for urinalysis is $81 million. If we assume that follow-up blood tests might be required for 1% of the drivers (54,000), the cost, at $60 per test, would total $3,240,000.

Therefore, to require drug screening more frequently than every two years would be prohibitively expensive.

Advance notification of testing

The trucking industry does not support a requirement for advance notification of drug screening. A regulatory requirement for advance notice gives the wrong signal to drivers that they can count on having a given time to "clean up their act." Such notice in connection with the prescribed medical examination would seriously undermine the purpose of monitoring compliance with prohibitions against substance abuse. If a person is using drugs, detection is the most inportant first step for the protection of the public. Advance notice of drug testing works against effective drug control programs.

Testing for probable cause

Unlike engineers on trains and pilots of planes, truck drivers are constantly subject to monitoring by public officials in the course of their operations. This monitoring is by police officers on the highway, and by state, local and Federal inspectors at roadside inspection points. For the most part, these officials have authority to require drug tests for a truck driver if there is "probable cause" to believe that the driver is impaired by drugs.

ATA supports such "probable cause" testing, including following occurrence of a truck accident if officials have "probable cause" to believe that the truck driver's ability was impaired by drugs.

However, we do not support a requirement for drug testing of truck drivers after every accident. The extent of drug involvement in truck accidents is so small that the Department of Transportation has never found it feasible to separately categorize drug use as a causative factor in its published truck accident data. This apparently low incidence of drug related truck accidents makes it impractical, and an unnecessary burden on drivers and motor carriers, to require drug testing after every accident.

Another reason for our opposition to drug testing after every truck accident is that such a requirement arbitrarily and incorrectly assumes that the truck driver is at fault in all accidents. Obviously this is not the case. A recent study done by the University of Michigan Transportation Institute for the American Automobile Association Foundation for Traffic Safety showed that in accidents involving cars and tractor-trailers, the car driver was found to be at fault three times as frequently as the tractor-trailer driver. If drug testing of truck drivers is required after every accident involving a truck then there must be similar testing for drivers of other vehicles involved in accidents.

Many motor carriers voluntarily conduct drug tests on their drivers based on "probable cause" but we do not believe that they should be required by law to do so. The reason is that the nature of the job takes drivers long distances from their employers. This makes it impossible for motor carriers to conduct testing in a timely fashion.

Random testing for drug use

As I have indicated, we advocate drug testing as part of the preemployment physical examination and as part of the two year physical examination required by DOT. We do not support other testing requirements which involve selecting individuals for drug tests randomly and without probable cause. The relatively small number of truck accidents which might be attributed to drug use by the truck driver indicates that random testing would not contribute to safety.

Some motor carriers include random testing in their drug control programs. We believe that is a prerogative based on operational characteristics and management philosophies of those companies. Other motor carriers which have different operations and management philosophies should not be required to conduct similar testing.

As the members of the Committee well know, there are many voices raised in protest of random drug testing. There are concerns about protecting the constitutional rights of individuals and, in fact, there are court actions pending. To the best of our knowledge, no decisions have been rendered.

SANCTIONS FOR DRUG USE

The trucking industry supports the sanctions for driving a commercial vehicle while under the influence of drugs, set forth in the Commercial Motor Vehicle Safety Act of 1986, of one year of disqualification for a first offense and lifetime disqualification for a second offense. *We support the provision for lifetime disqualification of a driver for use of a commercial vehicle in the manufacture, transportation or distribution of drugs.*

We also support the tougher penalty of a three year disqualification period for drivers who are guilty of a first offense of *drug use while transporting hazardous materials.* The penalty is justified because the driver has placed the general public at much greater risk than if the cargo had consisted of ordinary freight.

What penalty should be imposed if drug use is determined as part of a routine examination of a driver but usage is not determined to be related to operation of a commercial vehicle? DOT currently has a position that a finding of drug use determined through drug screening will render a driver medically unqualified until such time as a "clean" test is obtained. The trucking industry believes that this approach is not an adequate deterrent to substance abuse.

ATA recommends a specific disqualification period for such drivers. The period should be 30 days if the driver is in a rehabilitation program and 90 days if not. At the end of the period, the driver would be eligible for reexamination, unless the drug use was while on duty and a long term disqualification period is in effect. If the second test for substance abuse is negative, the driver would then be deemed medically qualified.

INDUSTRY PROGRAMS

There are many ongoing programs in the trucking industry to help motor carriers understand and cope with drug problems. The ATA Council of Safety Supervisors (the largest safety organization for any industry) has conducted special sessions on drug control programs as part of its national meetings for trucking industry safety directors. ATA affiliated state trucking associations hold similar drug control meetings.

ATA is in the process of developing a program in cooperation with truck stop operators which is designed to reduce or eliminate the sale of drugs at some truck stops. The support of truck stop management, trucking company management, and truck drivers will be enlisted in the program.

Many motor carriers have voluntarily implemented screening programs for both job applicants and as part of the physical examination required by federal regulations. Motor carriers that employ Teamster drivers have entered into a carefully crafted agreement for drug testing that is a milestone in management-labor relations.

The unanimous support for mandatory drug testing regulations by the motor carrier members of the ATA Executive Committee shows that the trucking industry is involved in drug control programs to a significant degree.

Generally companies which have drug testing programs find that drug use among their employees is at a very low level. Company programs vary: those which have programs test applicants for employment; some test periodically thereafter and others test on a random basis; still others test on the basis of "probable cause" which might include post accident testing.

Among job applicants, however, some carriers have found evidence of a high level of drug usage, especially in major metropolitan areas. For the protection of the public, motor carriers are making every effort to detect drug users so that they will not be permitted to operate commercial vehicles.

Some carriers also report that polygraphs have been effective in the detection of drug users during the selection process, and also in follow-up investigations where drugs have been found in vehicles or when use is suspected.

The question is: Who hires those applicants who are rejected following drug testing? There is a strong possibility that they are employed by motor carriers which do not test for drugs. Obviously there is a need for regulations which mandate drug tests for all driver job applicants. It is also further justification for elimination of the commercial zone exemption as requested of DOT by ATA.

SUMMARY

Accident records indicate that truck drivers who use drugs are the exception and not the rule. We believe that this good record is attributable to the concern of motor carriers and the fact that our drivers are subject to provisions of state and federal laws, and to enforcement by state and federal regulatory officials, and police officers.

The trucking industry has conducted numerous programs concerning the problems of drug use and to eliminate drug users from the industry. We believe that we are in the forefront of the industry in the actions that have been taken.

Federal action that is needed now must require preemployment screening for drug use, and periodic screening as part of the physical examination which drivers must undergo at least every two years. Federal action to eliminate the commercial zone rule will make many drivers subject to drug usage restrictions who are now exempt.

ATA supports drug testing by police and regulatory officials if they have "probable cause" to believe that a driver is impaired. We do not support advance notice of drug screening, because it enables those in the early stages of drug use to hide their problem and continue to jeopardize themselves and the travelling public.

If a driver is found to be a drug user, as a result of testing, there must be a period of disqualification even if it is not determined that the drug use occurred while the driver was on duty.

The trucking industry appreciates the opportunity to participate in the work of this Committee. We will be happy to answer questions, and to provide any additional information that might be helpful to the Committee members in their search for solutions to the problems of drug abuse in transportation.

[The following information was subsequently received for the record:]

American Trucking Associations,
Alexandria, VA, March 24, 1987.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: Thank you for giving me the opportunity to respond to additional questions following my testimony on February 20, 1987. Since my testimony, the American Trucking Associations (ATA) has reconsidered its position and supports random testing of the nation's truck drivers. Providing the government is serious about random national testing, ATA would welcome a procedure which is universal, fair, and equitable; one which will test every truck driver every year. Assuming that such a procedure does not clash with constitutionally mandated individual rights, ATA will do whatever it takes to rid the trucking industry of drug and alcohol abusers.

ASSESSMENT OF EFFECTIVENESS OF RANDOM DRUG TESTING

The initial concern of ATA about mandatory random drug testing was that it would be applicable only to truck drivers working for "companies". Independent owner-operators who work only for themselves would not be covered. Drivers working for extremely small carriers or companies which do not view themselves as part of the trucking industry (e.g., private carriers) would probably not engage in mandatory random testing.

The Committee's pilot test project for roadside random testing goes a long way to covering non-company drivers. Before implementation, however, several serious problems need to be resolved:

1. Will the driver be detained while waiting for the test results?
2. If the driver is detained, where will he (she) be detained and for how long?
3. If the driver is not detaiend, and the test turns out to be positive, how will the violation be handled? Will the driver be forced to return to the area of the infraction?

If the experience of the U.S. military is any example, random drug testing is a deterrent to drug use. But as noted above, all personnel must be subject to a test for it to truly reduce drug usage.

COST OF RANDOM TESTING

Carriers who currently have some type of drug testing indicate that the first test or urinalysis is about $15.00–$28.00. A follow up blood test to remove any false positives is $70.00. This does not include the cost of time for a supervisor to accompany a driver for testing or the driver's pay for time spent during testing. Of course, larger companies may be able to reduce their cost; smaller companies may face higher costs.

Full-scale random testing covering all carriers and drivers could cost up to $150 million per year.

PAST EXPERIENCE

A large segment of trucking industry is nonunion. Some carriers in this group do random testing as well as pre-employment and biennial testing during the physical.

Under the current Teamster contract, random testing is not allowed without prenotification or due cause. Current ATA policy opposes pre-notification. Our concerns about random testing are not based upon existing labor relationships.

We have no basis for deciding if employees would agree to random testing if a policy of rehabilitation was fostered instead of dismissal. However, if rehabilitation is required as an alternative to dismissal, it should be offered on a one-time basis and the cost borne by the employee. If the employee is involved with drug use a second time, and caught while driving, dismissal should be mandatory.

Again, we have to ask what would happen to non-company drivers? Would they not be subject to rehabilitation? If they were, who would pay?

Finally, any decision on rehabilitation versus dismissal should consider that the Motor Vehicle Safety Act of 1986 requires that if a driver is found operating under the influence of alcohol or drugs, he (or she) would lose his (or her) license automatically for one year for the first offense and permanently for a second offense.

I hope these comments answer your questions. If you desire additional information, please let me know.

Sincerely,

LANA R. BATTS.

The CHAIRMAN. Thank you very much.

Mr. Turner.

Mr. TURNER. Mr. Chairman and members of the committee, I am Douglas Turner, Director of Safety for Bonanza Bus Lines in Providence, Rhode Island. I am also Chairman of the Safety Committee of the American Bus Association. I appreciate the opportunity to appear here today to present the ABA's views on Federal standards for mandatory drug testing in the intercity bus industry.

ABA is the national trade association of the industry. We have approximately 700 operator members, including bus companies that provide intercity regular route, charter and tour, express commuter and airport bus service. One of ABA's highest priorities is to promote safe bus operations on our nation's highways, and ABA has taken a number of steps to accomplish this, including the requirement that ABA members must maintain a satisfactory safety rating from DoT and that all members comply with the Federal minimum insurance standards.

Prevention of bus operation by individuals impaired by illegal drug usage or alcohol abuse is obviously a critical element of motor carrier safety, and thus ABA strongly supports Federal drug testing standards. S. 362 and S. 356 both provide for the establishment of specific standards in mandatory drug testing of airline and railroad personnel and for disqualification of such personnel when drug usage is found.

ABA believes that similar standards are necessary for the intercity bus industry. The DoT already has regulations that render a bus driver physically unqualified to drive a motor vehicle if he or she is using a controlled substance, but there are no standards or requirements for drug testing that would insure an adequate opportunity to discover such drug usage. Moveover, there are no specific sanctions required against the driver who is found to be physically unqualified due to drug usage.

There is no question that drug usage is a serious problem in the bus industry, as it is in most other segments of society. In a recent proceeding, DoT noted a Greyhound study of applicants that were experienced intercity bus drivers to replace the drivers that went on strike during a work stoppage in November of 1983. Greyhound reported that 30 percent of the applicants' urine samples were positive for marijuana.

Many bus companies have attempted to deal with this problem by urine drug testing; however, since there is no Federal requirement for such tests and no Federal standards for when and how they are to be administered and what action to take upon receipt of positive results, disqualifications and other disciplinary actions are regularly challenged through the grievance and arbitration process or otherwise.

If bus companies are to succeed in preventing their drivers from using drugs, they must be backed up by clear and objective Federal standards that will withstand the arbitration process and judicial scrutiny.

To answer the question of exactly what these standards should be, ABA supports a Federal requirement that bus drivers operating in interstate and foreign commerce be tested for drug usage by means of urine samples at certain specified times. These required tests should be given prior to employment, within a reasonable period after an accident and when an employer has reasonable cause to suspect illegal drug usage.

Perhaps the most important requirement in terms of its effectiveness in detecting illegal drug usage is a requirement to test when there is reasonable cause to suspect. This rifle shot approach is most likely to produce positive results, and it should be encouraged. Thus, we urge the adoption of the broader reasonable suspicion standard rather than the narrower and more legalistic probable cause standard.

The broader standard would enable employers to test in many cases where positive results are a distinct possibility. Such tests probably would not be permissible under the probable cause standard. We think that emphasis on reasonable suspicion testing is more appropriate than a requirement for random testing of an entire work force. We frankly doubt that the results to be achieved by such across-the-board random testing would justify the personal intrusion or the administrative costs, particularly if the reasonable suspicion standard is in place.

We have similar doubts about regularly scheduled preannounced testing. We suggest that the Secretary be given standby authority to institute a requirement for regularly scheduled tests if there is substantial evidence that the other tests are not adequately curbing drug usage. In any event, these regularly scheduled tests should not be required more frequently than the mandatory biannual DoT physical examination and should occur as part of that examination.

With regard to whom should be tested, ABA believes that the Federal requirements should aptly apply only to bus drivers, not mechanics or other support personnel. There are several reasons for its position. First, the overwhelming majority of bus accidents where the bus company is at fault involve driver error. Second, it is only the driver that must meet certain Federal certification standards. Third, the consequences of a bus mechanical failure are much less severe than the consequences of an aircraft mechanical failure.

As to the specifics of the tests themselves, obviously it is critical that Federal law require sufficient safeguards so that the test results can be considered completely reliable. Thus, the ABA supports the provision of S. 362 which requires that an initial positive drug test be confirmed by another lab test of higher laboratory quality.

In addition to this requirement, procedures should be mandated they are adequate to insure uncontaminated samples and provide for a completely documented chain of custody for the sample from the time it is given until the laboratory analyst is done.

With regard to sanctions or rehabilitation, a disqualification penalty for illegal drug usage should be substantial enough to act as a significant deterrent, and the disqualification period should continue until successful rehabilitation has occurred. At present, FHWA regulations provide if a driver is convicted of unlawful drug usage, he or she is disqualified for one year and three years for subsequent offenses. ABA strongly suggests that the disqualification period for positive drug testing be at least the same one year in the first offense and three years for the subsequent offenses.

In addition, we believe that drivers should be required to complete a rehabilitation program along the lines outlined in S. 362 and should be required to pass a subsequent sufficiently reliable urine test indicating that the driver is drug free before the driver can have his or her disqualification removed, but we do not believe that it should be the financial responsibility of the employer to pay for such rehabilitation and retesting.

Whatever the merits of imposing these financial requirements on airlines, the fact is that the average bus company is a very small business that simply cannot afford to finance a full-scale rehabilitation program. The typical bus company has less than 100 employees and under $5 million in annual revenues. Clearly, the companies of this size are not in a position to establish formal drug abuse treatment and retesting programs.

Finally on the related question of bus driver alcohol use, Congress has just enacted a law that deals with the issue, the Commercial Motor Vehicle Safety Act of 1986. The CMVSA provides detailed sanctions for alcohol abuse by commercial motor vehicle drivers. We suggest that these provisions be given time to work before additional legislation concerning motor vehicle driver alcohol abuse is considered.

ABA appreciates the opportunity to present its comments on this important safety issue, and I would be happy to respond to any questions that the committee may have.

[The statement follows:]

STATEMENT OF DOUGLAS TURNER, CHAIRMAN OF THE SAFETY COMMITTEE, AMERICAN BUS ASSOCIATION

Mr. Chairman and Members of the Committee: I am Douglas Turner, Director of Safety, Bonanza Bus Lines, Providence, Rhode Island. I am also Chairman of the Safety Committee of the American Bus Association (ABA) and I appreciate the opportunity to appear here today to present the ABA's views on federal standards for mandatory drug testing in the intercity bus industry.

ABA is the national trade association of the intercity bus industry. We have approximately 700 operator members, including bus companies that provide intercity regular route, charter and tour, express commuter and airport bus service.

One of ABA's highest priorities is to promote safe bus operations on our nation's highways, and ABA has taken a number of steps to accomplish this including a requirement that ABA members must maintain a "satisfactory" safety rating from DOT and that all members comply with the federal minimum insurance standards. In addition, ABA has developed a very comprehensive safety program that all ABA members participate in. Prevention of bus operations by individuals impaired by illegal drug usage or alcohol abuse is abviously a critical element of motor carrier safety, and thus ABA strongly supports federal drug testing standards that will eliminate such unsafe operations to the greatest extent possible.

S. 362 and S. 356 both provide for the establishment of specific standards for mandatory drug testing of airline and railroad personnel and for disqualification of such personnel when drug usage is found. ABA believes that similar standards are necessary for the intercity bus industry and urges the passage of legislation that establishes such standards.

The Department of Transportation (DOT) already has regulations that render a bus driver physically unqualified to drive a motor vehicle if he or she is using a controlled substance (49 CFR § 391.41(b)(12)), but there are no standards or requirements for drug testing that would ensure an adequate opportunity to discover such drug usage. Moreover, there are no specific sanctions required against a driver who is found to be physically unqualified due to drug usage.

There is no question that drug usage is a serious problem in the bus industry as it is in most other segments of society. In a recent proceeding (BMCS Docket No. MC-120: *Qualifications of Drivers*), DOT noted a Greyhound study of applicants "that were experienced intercity bus drivers" to replace the drivers that went on strike during a work stoppage in November, 1983. Greyhound reported that "30% of the applicants' urine samples were positive for marijuana". (51 Federal Register 17577). This study indicates the potential seriousness of the problem.

Many bus companies have attempted to deal with this problem by urine drug testing prior to employment, after accidents and/or when there is reasonable grounds to believe that drug usage has occurred. However, since there is no federal requirement for such tests and no federal standards for when and how they are to be administered and what action to take upon receipt of positive results, disqualifications and other disciplinary actions are regularly challenged through the grievance and arbitration process or otherwise. Quite often these challenges are at least partially successful. Thus, if bus companies are to succeed in preventing their drivers from using drugs, they must be backed up by clear and objective federal standards that will withstand the arbitration process and judicial scrutiny.

Turning to the question of exactly what these standards should be, ABA supports a federal requirement that bus drivers operating in interstate and foreign commerce be tested for drug usage by means of urine samples at certain specified times. These required tests should be given prior to employment, within a reasonable period after an accident, and when an employer has reasonable cause to suspect illegal drug usage.

Perhaps the most important requirement in terms of its effectiveness in detecting illegal drug usage is the requirement to test when there is "reasonable cause to suspect" drug usage. This "rifle shot" approach is most likely to produce positive results, and it should be encouraged. Thus, we urge the adoption of the broader "reasonable suspicion" standard rather than the narrower and more legalistic "probable cause" standard. The broader standard would enable employers to test in many cases where positive results are a distinct possibility, such as on the basis of credible hearsay evidence. Such tests probably would not be permissible under the "probable cause" standard.

We think that emphasis on reasonable suspicion testing is more appropriate than a requirement for random testing of an entire workforce. We frankly doubt that the results to be achieved by such across the board random testing justify the personal intrusion or the administrative cost, particularly if the "reasonable suspicion" standard is in place.

We have similar doubts about regularly scheduled, pre-announced testing. As long as pre-employment, post-accident and reasonable suspicion testing is accomplished properly, it is difficult to see that additional, regularly scheduled tests would add very much to the detection process. We suggest that the Secretary be given standby authority to institute a requirement for regularly scheduled tests if there is substantial evidence that the other tests are not adequately curbing drug usage. In any event, these regularly scheduled tests should not be required more frequently than the mandatory biannual DOT physical examination and should occur as part of that examination.

With regard to whom should be tested, ABA believes that the federal requirements should apply only to bus drivers, not mechanics or other support personnel. There are several reasons for this position. First, the overwhelming majority of bus accidents where the bus company is at fault involve driver error. Second, it is only the driver that must meet certain federal certification standards; thus, extending the federal drug testing requirements to maintenance and support personnel would be opening up an entirely new realm of federal regulation that has not been shown to be necessary. Third, obviously the consequences of a bus mechanical failure—usually the engine stops and the bus ends up parked on the side of the road—are much less severe than the consequences of an aircraft mechanical failure.

As to the specifics of the tests themselves, obviously it is critical that federal law require sufficient safeguards so that the test results can be considered completely reliable. Thus, ABA supports the provision of S. 362, which requires that an initial positive drug test be confirmed by "another test of higher laboratory quality". In addition to this requirement, procedures should be mandated that are adequate to ensure uncontaminated samples and to provide for a completely documented chain of custody for the sample from the time it is given until the laboratory analysis is done.

With regard to sanctions and rehabilitation, the disqualification penalty for illegal drug usage should be substantial enough to act as a significant deterrent, and the disqualification period should continue until successful rehabilitation has occurred. At present, FHWA regulations provide that if a driver is *convicted* of unlawful drug usage, he or she is disqualified for one year and three years for subsequent offenses (49 CFR § 391.15). ABA strongly suggests that the disqualification period for positive drug testing be at least this same one year for the first offense and three years for subsequent offenses.

In addition, we believe that drivers should be required to complete a rehabilitation program along the lines outlined in S. 362 and should be required to pass a subsequent sufficiently reliable urine test indicating that the driver is drug free before the driver can have his or her disqualification removed. But we do not believe that it should be the financial responsibility of the employer to pay for such rehabilitation and retesting. Whatever the merits of imposing these financial requirements on airlines, the fact is that the average bus company is a very small business that simply cannot afford to finance a full scale rehabilitation program. The typical bus company has less than 100 employees and under $5 million in annual revenue; clearly, companies of this size are not in a position to establish formal drug abuse treatment and retesting programs.

Finally, on the related question of bus driver alcohol abuse, Congress has just enacted a law that deals with this issue, the Commercial Motor Vehicle Safety Act of 1986. The CMVSA provides detailed sanctions for alcohol abuse by commercial motor vehicle drivers. We suggest that these provisions be given time to work before additional legislation concerning motor vehicle driver alcohol abuse is considered.

ABA appreciates the opportunity to present its comments on this important safety issue, and I would be happy to respond to any questions that the Committee may have.

[The following information was subsequently received for the record:]

AMERICAN BUS ASSOCIATION,
Washington, DC, March 20, 1987.

Senator ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR SENATOR HOLLINGS: The American Bus Association is pleased to provide this response to your letter of March 12, 1987. We regard the issues raised regarding random drug and alcohol abuse testing as important ones and offer the following comments for your review and consideration.

As an industry, we are seeking an adequate, effective and authorized means to deter and catch substance abusers. It is our feeling that a system which includes both periodic and for cause testing, without a mandate for random testing, will be this means. Our industry already has some experience in this area, as many companies are acting along the guidelines proposed by both S. 356 and S. 362 utilizing the two testing criteria we advocate. They feel that they are deterring unwanted behavior and have a reasonable means to catch those who abuse drugs or alcohol without unnecessarily demanding tests from those who are meeting the responsibilities that their employment demands.

Our industry relies upon two supervisory foundations in order to ensure safe operation of vehicles on the highway. The first of these is the creation of individual motivation upon the part of the driver to act reponsibly. This is done through training, awareness programs, and a system which rewards proper behavior and discourages, through disciplinary programs, unwanted, unreliable or unsafe actions. The second of these foundations is the monitoring of driver actions in a systematic manner to ensure that our standards for safety are in fact being met. It is into this second area that drug and alcohol testing programs are significant to us. Programs such as these are tools for us to use to monitor our personnel. Periodic testing is of value as an ongoing deterrent; for cause testing is the tool to use when behaviors are observed which create questions in our minds as to the individual's adherence to his or her personal safety qualification and our responsibilities under the existing Federal Motor Carrier Safety Regulations. Random testing has no place in this system of monitoring, nor, in our opinion should it.

The Intercity Bus industry has already accepted, willingly, the financial demands that are incumbent with compliance with Federal Safety Regulations. Moreover, we routinely exceed the minimal standards set forth in these rules, again with a financial commitment of our own choosing. We perceive such financial demands as investments made in behalf of highway safety, good for us as businesses and good for the public we transport and share the roads with. When a bus company establishes its own drug and alcohol testing program, it demonstrates both safety initiative and financial commitment. When tests are administered, the costs are typically about $25.00 for an initial screening, and $50.00 for a follow up, in depth analysis. These test costs are variable, dependent upon location, laboratory selected and volume of business the company provides to the selected testing facility. To the industry as a whole, periodic testing of our entire driver corps, estimated here at approximately 30,000 people, amounts to a cost of $750,000, this amount for an initial screening only.

As an industry, our experience with drug and alcohol abuse testing is in its infancy. We have, in many companies found little or no resistance to the implementation of a testing program. In others, there have been implications which have led to grievances or other types of hearings. Through these experiences, we have learned and our employees have learned as well. Our position that two types of testing: periodic and for cause are certainly the result of what we regard as fair practices and at the same time placing at our disposal the tools necessary to ensure safety and compliance. The importance of S. 356 and S. 362 to our industry is that the mandate that these bills provide removes these processes from the labor management arena and places the emphasis on reasonable actions which ensure safety.

It is important to place the issue of drug and alcohol abuse testing into the proper context. The Intercity Bus Industry supports the concepts detailed in S. 356 and S. 362, and acknowledges that our employees would, insofar as substance abuse, reflect to a greater or lesser degree, the problems of the society in which we live. At the same time, we do not perceive large numbers of employees being negatively impacted by reasonable testing programs. In most of the companies in our industry, small businesses by any measure, there will be only the smallest impact: one, perhaps no employees affected by the disqualification criteria we are bound to uphold. At the same time, disqualification is the standard we are mandated to uphold through the Federal Motor Carrier Safety Regulations. When a driver is disqualified, he or she has lost the very basis of employment with the company utilizing the services such an employee can offer. We find no alternative to suspension (or termination) in all but the rarest of instances. If an employee is able to rehabilitate him or herself, then certainly the individual can be requalified and conceivably reemployed, either by the prior employer, or through the continuing demand for reliable, experienced and qualified drivers with another bus company. As employers, we have in our opinion, a series of responsibilities to the public, the employee, and to ourselves. Safety is certainly one of these. Fair treatment to all parties is another. Fiscal responsibility ensures our continued ability to provide the first two and remain in business, a reasonable expectation for ourselves. We, on this basis then, find that random drug and alcohol testing violates our perception of fairness, and as indicated previously, provides us with an unnecessary supervisory tool. Employees, regardless of how they perceive random testing and our responses to a determination of substance abuse should simply not be subjected to such test provisions. Further, as small businesses we are not able to provide rehabilitation services to substance abusers, either internally or through the use of an outside service at our cost: this approach violates our premise of fiscal integrity so necessary to ensure continued employment to our staff, safety in operations, and compliance with all of the applicable laws and regulations which otherwise affect us as an industry.

The American Bus Association and the intercity bus industry are proud of our continued record of safe, reliable transportation services to the American public. Our responsibility is to see to it that our industry continues to meet these standards of quality performance. To this end, we have embarked on many safety programs on an industry wide basis. As a part of this continuing commitment to safety, we would be happy to provide you with additional comments, information, or details you may require in evaluating these and other matters. Again, we thank you for providing us the opportunity to offer these comments.

Sincerely,

DOUGLAS TURNER,
Chairman, Safety Committee,
Director of Safety, Bonaza Bus Lines.

The CHAIRMAN. Very good.

Mr. Dempsey.

Mr. DEMPSEY. Thank you, Mr. Chairman. I will be quite brief.

We placed into Senator Exon's subcommittee's record all the data about the railroad safety, and it is fine and all that, but that is not what you are talking about today, so let me address that issue.

Do we have a problem in the rail industry with respect to drug and alcohol abuse of safety-related employees? The answer is yes. Now, I cannot measure it. The Senator would hope to have data on that. Senator Danforth, I think, pursued a very useful line of inquiry, and we will forward whatever we have so that this record can be as good as it can be to sustain the position of the Congress in whatever legal test may ensue.

There is a study by FRA. It is a little bit dated. It is probably five years old. Maybe it is not entirely accurate, but it and all the other data that we have had in the last 11 months indicates that there is a significant problem.

Now, the railroads have always known that, and so the railroads have been among the leaders in American industry in addressing that problem. Our so-called Rule G, which applies both to alcohol and to drugs, is the most stringent rule—well, I cannot say the most stringent but at least as stringent as any rule that I have seen in any of American industry—but we need help.

FRA and DoT have come forward, and we now have a set of rules in place. It took a long time, longer than we wanted, but it was a difficult question to address, and we now have rules in place that I think are outstanding.

What is left to be done? The answer is simple: random testing. I testified last year, as I think Senator Danforth will remember. He raised the question then. The railroads have consistently sought from the Federal government the authority to test randomly the employees who are directly related to the safe operation of the railroads.

We pressed that point in the FRA proceedings. FRA did not agree with us at that time, and I am delighted to see that FRA and DoT have now changed their views and that they will now support random testing. I do not mean to criticize that at all. There is a significant legal problem and, therefore, as these rules are crafted, I think that is what ought to be done. FRA should be given the direction, not just the authority but the direction, by the Congress to impose mandatory testing. Those things can all be winnowed out in one way or another; for example, which employee should be covered.

Well, the FRA regulations cover in the railroad industry so-called hours of service employees, the people who operate, the engineers, the brakemen, the conductors, our equivalent of air controllers, the dispatchers, and some yard masters. An argument can be made to extend that coverage to mechanics, shop craft employees, maintenance-of-way people and all of that. S. 362 does mandate some expanded coverage.

I would suggest, just by way of example, that be made discretionary, because I think you have to worry here about whether you are giving an argument in court with respect to whether or not the Congress could mandate it for, let us say, the General Motors production line employees. I would be more comfortable myself with a rule or regulation and a law that is drafted fairly narrowly but still does the job.

Why mandatory testing? I think you just have to look at the last accident, the worst one that Amtrak has ever had. Senator Exon had testimony on it a couple of days ago. Here we have a situation where 16 people were killed, and I do not know how many hundred injured, and just extraordinary rule violations by the Conrail freight crew, and now they have tested positive for drugs; but they were with a supervisor for, as I recall, Senator, the testimony was 15 minutes or something of that sort. He was right up to them cheek to jowl, and he had been trained under the FRA program to detect drug and alcohol use, and he saw nothing.

Now, I am not saying that was the cause of the accident because I do not know, but what we do know is that we had two operating employees here that had used marijuana and a supervisor who had been trained to detect it did not detect it. So maybe alcohol is a different matter, but drugs are a serious problem, and I just feel very strongly that random testing ought to be done and it ought to be mandated by the Congress because that will strengthen the legal case, it seems to me, when inevitably the courts will be called upon to deal with it.

[The statement follows:]

STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

My name is William H. Dempsey. I am President of the Association of American Railroads, a trade association representing the nation's freight railroads. The AAR is pleased to be afforded the opportunity to testify on the proposed legislation on drug and alcohol abuse.

One year ago I testifed before this Committee on drug and alcohol rules that had just been promulgated by the Federal Railroad Administration (FRA). We wholeheartedly supported FRA's rules at the time they were issued and still do. FRA developed its rules after a lengthy and deliberative rulemaking proceeding, and the resulting program is a well considered, aggressive approach to the problem of combating drug and alcohol abuse. It is no wonder that FRA is recognized today as the leading force in goverment efforts to control drug and alcohol abuse in transportation.

Only a short time has passed since the implementation of FRA's drug and alcohol abuse program. Therefore, on an industry basis it is impossible to quantify the reduction in drug and alcohol use by railroad employees attributable to FRA's efforts. We are confident, however, that FRA's program will prove to be highly effective. I should note that certain individual railroads are reporting dramatic improvements. The number of tests showing the presence of drugs and alcohol has been decreasing and so has the number of reported accidents and employee injuries due to "human factors." Unfortunately, the FRA regulations have been under a cloud of litigation for the past year. The Railway Labor Executives Association has attacked the regulations in the United States Court of Appeals for the Ninth Circuit. Additionally, the RLEA has brought action against individual railroads seeking to nullify certain aspects of their drug and alcohol testing programs. Such legal actions have had a clilling effect on the implementation of the regulations.

Of course, no regulatory program will be able to eliminate completely the problem of drug and alcohol abuse. It is important, therefore, to continue to search for additional ways to further curtail drug and alcohol abuse by railroad employees. Authority for random testing would be a valuable supplement to the existing FRA program. At the present time railroads cannot unilaterally implement random testing programs.

The problems of detecting that a railroad employee is under the influence of a drug or alcohol have been well documented. An employee's judgment and reactions may be detrimentally affected by the presence of drugs or alcohol in the system even though there is no erratic behavior detectable by supervisors or fellow employees. Without observations which justify "testing for cause" the only way to determine that such an employee is under the influence is through random testing. Because it is impossible to test each individual every work day, a testing system which constitutes a strong deterrent would be the desirable. Without random testing, rightly or wrongly railroad employees perceive that their chances of being caught under the influence of drugs or alcohol are extremely small. Random testing would be an invaluable method of deterring drug and alcohol abuse.

A random testing program can be developed which would avoid constitutional problems. Of course, this does not mean that a random testing program can be conducted with no regard for the railroad employee. Random tests must be accomplished in as discreet a manner as possible. It would be counter-productive to railroad operations to support a program that demeaned or humiliated railroad employees. It is possible, however, to develop a program that tests employees in a fair and reasonably non-obtrusive manner. It should not be forgotten that it is railroad employees who stand to lose the most in a catastrophic accident caused by alcohol or drug abuse. A random testing program designed to help prevent accidents is in the interest of railroad employees.

The witnesses have been requested to address several issues posed by the Committee. I would like to comment on the proposed legislation in the context of these issues.

1. Which types of individuals should be covered by drug testing? The current drug and alcohol regulations apply to those employees covered by the Hours of Service Act (45 USC § 61 et. seq.) This includes employees in train and engine service, dispatchers, operators, signal maintainers and some yard masters. These employees are directly responsible for the safe operation of trains and the wayside signals. Thus, there is a strong argument that the public interest in the safe operation of trains justifies the testing of such employees. That argument would become more difficult to make under a Federally mandated program if the expanded class of employees has little to do with the safety of railroad operations. This consideration becomes more important as we proceed beyond "for cause" tests and implement "random testing." Thus, it appears that the provision in S. 632 *requiring* the application of the rule to employees other than those now covered is not appropriate even though there may be valid reasons for extending coverage to other classes of employees. It would be more prudent to direct the Secretary of Transportation to consider expanded coverage and reach a decision on the basis of a fully developed administrative record.

2. Under what conditions should an individual be tested? Existing regulations require the testing of employees following certain accidents and permit testing following minor accidents and violations of railroad operating rules which define safe operating practices. The conditions that trigger testing under the current regulations are justifiable circumstance warranting tests for the presence of alcohol or drugs. We also believe that drug screens should be performed during physical examinations when an employee returns to service after an extended absence and during annual or bi-annual physicals. These tests, supplemented with a carefully structured program of random testing, constitute a broad and satisfactory range of conditions for testing.

3. How often should an employee be tested? S. 362 calls for a testing of covered employees at least every six months. It would appear that with return to service physicals, post accident testing, reasonable cause testing and random testing, it would be only necessary to require drug screens for covered employees at their regular physical examinations, which range in frequency from one to three year intervals.

4. What safeguards are appropriate? Any random testing procedure would have to be carefully structured by the railroad with adequate safeguards to ensure that the system will be administered in a fair and reasonable manner. By its very nature timely random testing will avoid the possibility of using a testing program to selectively harass or disadvantage particular employees. Employees tested would repre-

sent a statistically valid profile of the work force. The circumstances for collections of body fluid samples should be structured to protect the dignity of the individual. The testing laboratories performing tests should be proficient. The integrity and chain of custody of samples should be protected. Samples which test positive in a drug screen should be retested using a second test methodology. These are some of the appropriate safeguards which come readily to mind.

5. Under what circumstances should rehabilitation be offered? Under the existing regulations each individual with drug or alcohol problems who voluntarily seeks assistance or who is referred to the company by family or fellow employees is offered counseling and rehabilitation. In addition, in most cases railroad employee assistance programs are available to employees who are detected to be in violation of the company's drug and alcohol rules.

6. What are the appropriate sanctions for employees who are found to have abused alcohol or illegal drugs? A number of railroads adhere to the policy of terminating the employment of any person found to have ingested drugs or alcohol while on duty or found to be under the influence of drugs or alcohol. Upon termination the employee may seek assistance and rehabilitation in a Company sponsored program. These railroads normally permit the person to return to duty after a period of one year if it can be demonstrated that there is no drug or alcohol dependence. After a second violation the employee is dismissed and not considered for re-employment.

Other railroads have entered into so called "by-pass" agreements with the unions under which a first time offender found to be in violation of the railroads' drug and alcohol rule is suspended from service and offered rehabilitation. The employee can then return to service following rehabilitation. A second offense results in permanent dismissal.

Under either approach the employee has the opportunity to undergo treatment and rehabilitation. The actions only vary to the extent that railroads with "by-pass" agreements permit the employee to return to work as soon as successful treatment is completed. The first time offender on railroads without "by-pass" agreements cannot return to service until the employee assistance counselor and the company physician determine that the employee has been rehabilitated and the employee has been out of service for a period of time established by company policy.

The provisions of S. 362 direct the Secretary of Transportation to consider specific sanctions for alcohol use or impairment while on duty and for unlawful use of a controlled substance. The Federal Railroad Administration did consider the possibility of establishing prescribed disciplinary actions during the course of the administrative rulemaking on drugs and alcohol. The problem is that FRA does not have the authority to impose sanctions against an employee—only against the railroad. In situations such as a deliberate act of sabotage of a safety device, such as cab signal warning devices, this is obviously a major defect in the law. We support DOT's request that it be given authority to proceed against individual employees, as it now has to proceed against the companies, in the case of violation of safety regulations. The question of the appropriate level of governmental sanctions, both against railroads and against employees, is a matter that should be left to the rulemaking authority of FRA.

Mr. Chairman, we would be remiss if we did not emphasize that the vast majority of railroad employees are among the most responsible and productive in the nation's work force. These railroad employees must receive a substantial amount of credit for the significant improvements in the railroad industry's safety record. Train accidents, employee injuries, and fatalities have been decreasing in number. Our safety record could not have been accomplished without a dedicated, efficient, and sober work force.

The CHAIRMAN. Mr. Dempsey, I agree with you and value your historical perspective. Perhaps you are right. Perhaps we ought to make it a more narrow bill. We want to do it with caution. Senator Danforth and I are not trying to make headlines. We are trying to proceed in a deliberate and objective fashion. Perhaps it should be discretionary. I think one drug is as bad as the other. We could spend all day long on that one.

From your standpoint Mr. Dempsey, is this legislation realistic in the trucking industry. I value your experience.

Mr. DEMPSEY. Senator, they are all good friends of mine there, and as you say, we do have an economic interest in it in the sense that these things are expensive, and you know, the question was asked, well, who is going to pay for it and all of that, and I would certainly defer to Lana Batts on that question.

Just as I was listening to the testimony, though, it occurred to me that if they can weigh the trucks at weighing stations they ought to be able to take random tests, but maybe that is not right. I do not know.

The CHAIRMAN. Mr. Landry, you sound like my pollster. I got both messages from you.

Are you for random testing or not?

Mr. LANDRY. We are, as I tried to point out, Mr. Chairman, we are in favor of the concept of random testing and think that it should be included—as I said, our membership is divided over whether it ought to be merely expressly permitted by regulation or mandated by the regulation.

The CHAIRMAN. You see, Mr. Dempsey is talking about help. He looks upon the regulation as help, rather than a burden. Quite frankly, with respect to our friends in labor, I would think that if I were the business manager I would want the kind of help as outlined in the context of the Dempsey testimony. Thus, I could tell all prospective workers, look as business manager I have got to enforce this rule. It is a sensitive thing, but the government requires it in the name of the public good. Based on your experience and without giving me the poll about some members wanting it while some do not what do you think we ought to do?

Mr. LANDRY. Mr. Chairman, we unanimously, all of our members want a Federal regulation in this area.

The CHAIRMAN. Very good. That is what I wanted to find out.

Senator Danforth.

Senator DANFORTH. I cannot improve on that question.

The CHAIRMAN. Senator Exon.

Senator EXON. That last question kind of reminds me of the old story, everybody is for the new church, but over half of them oppose it because of the location.

That is one of the problems we run into, but I would like to ask a question of Ms. Batts and Mr. Turner.

The reason that we are here today, is because of a terrible tragedy north of Baltimore involving two trains. It is my view that when these kind of things happen the good that comes out of them is that we try and institute some type of reforms in order that it does not happen again. I am sure that we all agree with that.

As I understand from your testimony you felt that with respect to random mandatory drug testing and based upon the input of your organizations that you represent, you are not in favor of including your operators under such a law.

Am I correctly reading your statements?

Ms. BATTS. We do not favor random drug testing at this time, because we think that there are other steps that can be taken now which will aid in the detection of drug abuse among truck drivers. For example; drug tests should be a part of the pre-employment physical. We petitioned DOT in May, 1986 to ask for such a requirement. DOT has not yet responded or issued an advanced notice of proposed rulemaking. Previously, DOT only wanted drug testing for drivers of hazardous materials. We think it has to apply to all truck drivers.

We also think that drug testing on the periodic exams and the biennual exams should also apply to commercial truck drivers in the commercial zones. If Congress were to pass a law today, it would not apply to drivers in commercial zones. because there is an exemption from Bureau of Motor Carrier safety regulations for the commercial zones. In other words, we think that DOT should at least the first two steps, that is, include drug testing for the preemployment applicant as well as the biennual medical examination, in addition, to eliminating the exempt commercial zones. Those two steps will go a long way toward dealing with the drug problem.

The second objection that we have, is based upon the sheer numbers of drivers. How do you test over five million truck drivers employed by 214,000 companies? For example, the airlines are represented by less than 100 members. The railroads representing fewer than 100 companies. How do you test an owner-operator who is his own company? Who administers the test? Roadside inspections conducted under the Motor Carrier Safety Assistance Program will be checking truck drivers more often. About 90 percent of the inspectors are police officers who have the authority to administer a test at that point.

We think you are going to get at drug abuse through the new programs such as MCSAP that have been adopted, and if DOT would adopt the drug regulations that we have petitioned.

Senator EXON. My answer to that would be if it is random then it might not be nearly as oppressive as you think it might be, but then again I do not know. Mr. Turner, what do you have to say on that?

Mr. TURNER. Mr. Chairman, we are in favor of the random drug testing, and we wanted to go one step farther, of a reasonable cause if for some reason we suspect that there is a problem, then we want to take care of the problem and nip it in the bud, then we certainly do not want someone out on the road who is going to endanger not only the lives of people on the vehicle but also the other motorists that we share the highways with.

Senator EXON. One last question, Mr. Chairman. I know my time is up, but I would like to ask this to Ms. Batts and Mr. Turner again. You are aware, I am sure, that as it was brought out in our subcommitee hearing, Mr. Chairman, the other day, that one of, at least one of the railroad employees had a tremendously bad driving record, in fact, had been convicted, as I understand it, or had been charged with DWI not too many months ago. I am wondering about your two organizations. If you routinely suggest to your members or do your members check the drivers' records of the people who drive your public conveyances?

Ms. BATTS. Yes, our companies check the driving records, but as you are well aware it has been almost impossible to do that up until the passage of the commercial driver's license.

Senator EXON. I heard that same thing the other day here, that it is almost impossible to do that. I have had my staff check it out, and we found out in checking with the Motor Vehicles Directors Association that while they do not know the overall proposition, most of the States currently have a system where insurance companies and others can make inquiry with regard to drivers' licenses for a very minimal fee. Are you telling me that you could not get Jim Exon's driver's license in Nebraska if I applied to one of the people that you represent.

Ms. BATTS. No, I did not say that at all, Senator Exon. I can find the driving history, if I know it is Jim Exon and he has a driver's license in Nebraska, but short of going to every State motor vehicle administrator and making sure that I know every alias that you possibly could have and every way that you could spell Exon, I cannot tell if you have got more than one license. The problem is those licenses I do not know about, and then trying to determine that driving record. The commercial driver's license will solve that problem.

Senator EXON. Are you telling me that when this person applies to go to work for one of your companies they do not even ask them to list on their application where they have driver's licenses and what the numbers are?

Ms. BATTS. Well, they are only allowed to have one, but if there is no way to prohibit them from having more than one a truck driver will get more than one license. In fact, the same motor vehicle administrators will tell you that as many as 40 percent of the truck drivers have multiple licenses. The commercial driver's license is going to eliminate that situation. But then what your question then asks, assuming that we can find where the driving records are, "Do we check the driving history?" The answer is yes. But you must remember there is a court case that says we cannot use the driving record of that individual when the violations occurred while he was driving an automobile to discipline him while he is driving a truck.

Senator EXON. No, but you would not have to hire him.

Mr. BATTS. You can use it in the hiring process but you cannot use it in the firing process.

Senator EXON. All right. Do you have any different view on that, Mr. Turner?

Mr. TURNER. Mr. Exon, there are already Federal regulations that require that we find out from the employees on a yearly basis any traffic violations or convictions. That is already in the Federal regulations, of which we already do. Just to add, so far as on the licenses, it is next to impossible to tell whether or not someone does have a license in another State. The new regulations—as a matter of fact the Motor Carrier Act that was passed in 1986 is now requiring employees to respond to us more frequently within the time that they are convicted of a traffic violation.

Senator EXON. Are you indicating to us that a significant number of the bus drivers and a significant number of the truck drivers are covering up their driving records? I do not think that to be the case.

Mr. TURNER. I do not think so, but as I say, the regulations are requiring that they do tell us about them. Whether we as employers want to check on them, yes, we do have the means. As you have said, you can check through motor vehicle records in various States.

Senator EXON. Do you check them?

Mr. TURNER. I do. Unfortunately, one State we deal with there is a Privacy Act that I as an employer cannot get it It has to go through the employee himself.

Senator EXON. Thank you, Mr. Chairman. My time is up.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman.

I thank the members of the panel.

Ms. Batts, you have a classic statement. I really love it. It is kind of hard to figure out exactly. It looks like you go right to the edge of the cliff and then you stop. I mean, I know you are against drugs. That is clear. I also know you are for strong penalties for anybody who uses them, and I know you do not mind testing if there is a probable cause that someone is using drugs You get a little bit closer when you say we do not mind roadside monitoring. I do not know what that is, but you do not mind peple being monitored at the roadside for illegal drugs. However, what I do not understand is, why do you support drug testing if the people to be tested have advance notice of the test?

Ms. BATTS. We do not support that.

Senator BREAUX. But you do not support it if it is a random test. However you do support it if it is advance notice. You talk about how you all have petitioned the Transportation Department to support drug screening for pre-employment so you do not mind drug testing for pre-employment application, and apparently you do not mind drug testing if it is part of the biennual physical examination. So what you are telling this committee is that we support drug testing if the people that are going to be tested know when it is going to occur; however, if they do not know when the test is going to occur you vehemently oppose it.

Ms. BATTS. We oppose advance notice of drug testing, for example, before the physicals that drivers are required to have. We oppose random drug testing because we do not know how we are going to be conducting the tests. Drug testing can be done through the monitoring of the roadside inspections and the Motor Carrier Safety Assistance Program, (MCSAP) because about 90 percent of the inspectors at those roadside inspections are police officers who have the authority if they have probable cause that those individuals were under the influence of drugs or alcohol.

We support random testing when there is probable cause—we support testing when——

Senator BREAUX. Obviously, if somebody is driving down the wrong side of the road that is probable cause. He ought to be stopped. Somebody ought to test the guy to see if he is awake or on drugs or something is wrong. What I am saying is that your association does not mind it if we notify him when it is going to occur. I do not understand that. Assuming that the details can be worked out for random testing, is your opposition still the same? You are concerned about the process apparently, but suppose the process can be worked out so that we can establish random testing for people who have commercial licenses as commercial truck drivers. Do you still oppose it at that time?

Ms. BATTS. We have to know what the process is. I do not want to agree in concept to something when you consider the sheer numbers. Again, it is the same thing the Secretary pointed out.

Senator **Breaux**. I am not talking about testing every driver. I know there are more truck drivers than you have airline pilots. We are not talking about testing every one of them. The concept here is that if they know tests could occur, if you test only 1 percent, no one knows which 1 percent is going to be tested. So it acts as an impediment to the illegal use of drugs by the other 99 percent who probably will not be tested because nobody knows which one it is.

Ms. **Batts**. But the random testing that the airlines are going to do is the random testing within those companies, on some kind of facility that those companies have, and under some kind of doctor's supervision in a controlled situation. How are you going to do a random test in Montana when it is 30 below and the wind is blowing 40 miles an hour? How are you going to figure out which ones to test? Is the government then going to do the random testing? Because that is the only way it can be done if it is an owner-operator.

Senator **Breaux**. Well, the word we are getting from your association is, if you tell us when the test is going to occur we will approve it, but if it is a random test and the person being tested does not have the time to prepare for it, then we are against that. I think that is a fallacy, because you support the concept of testing but only under your time frame and only when you know when the test is being set. I don't think that is getting to the real point of what the Chairman is trying to reach.

Thank you.

The **Chairman**. I thank the Senator, because that is what we have in the IRS, random testing, 1 percent. It keeps us honest.

We have random testing and we do not worry how it is to be paid for or administered. They will knock on your door.

Senator Danforth.

Senator **Danforth**. I have nothing, Mr. Chairman.

The **Chairman**. Well, we appreciate this panel's appearance very, very much, and we will move to the next panel.

The committee will move on to Panel Number 2. Is Captain Richard Stone of the Aeromedical Research, Airline Pilots Association, Mr. Lawrence Mann of the Railway Labor Executives Association, Mr. Vernon McDougall, of the International Brotherhood of Teamsters, and Mr. Robert Molofsky, representing the Amalgamated Transit Union. We will start with you, Captain Stone. By the way, your statements will be included in the record in their entirety and we will ask that you please summarize.

STATEMENTS OF CAPT. RICHARD STONE, EXECUTIVE CHAIRMAN FOR AEROMEDICAL RESEARCH, AIR LINE PILOTS ASSOCIATION, ACCOMPANIED BY GARY GREEN, LEGAL DEPARTMENT; ROBERT A. MOLOFSKY, LEGISLATIVE DIRECTOR, AMALGAMATED TRANSIT UNION; VERNON McDOUGALL, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN, AND HELPERS OF AMERICA; AND LAWRENCE M. MANN, RAILWAY LABOR EXECUTIVES ASSOCIATION

Mr. **Stone**. Thank you, Mr. Chairman and members of the committee. I am Richard B. Stone, executive chairman for Aeromedical Research of the Air Line Pilots Association. With me is Gary Green, who is head of our legal department. The Air Line Pilots

Association comprises some 39,000 professional airline pilots who work for 47 airlines. I take great exception to many of the comments that were made here this morning which implies that our union has been irresponsible in substance abuse programs.

First, it is important to understand that drugs thus far are not a significant problem among airline pilots. Based on accident reports compiled by the National Transportation Safety Board, there has not been a single U.S. scheduled airline accident attributed to alcohol or drug abuse by the pilots. The cockpit of a modern jetliner has no room for drugs, alcohol, or any other substance that impairs judgment and performance. Airline pilots recognize this.

The first real issue that seem to be before this committee is the question of random testing, but let me tell you that we are in agreement with the committee that there should be some form of testing in the industry, the transportation industry, but it ought to be based on studies that have found where the effect can be well matched. In our proposal we find that pre-employment screening of applicants after an accident, probable cause, and during a rehabilitation program are all adequate causes for testing. We are for testing.

However, we are unalterably opposed to random testing because of five specific reasons. The first one is that random testing is inefficient. The best evidence that we have is that there is a miniscule number of pilots using illicit drugs. Furthermore, random testing only looks at the individual once or twice a year. Our human intervention and motivation study which is our alcohol program and is a substance abuse program as well on the other hand monitors the pilot 24 hours a day seven days a week.

Second, the problem of false positives makes random testing a threat to thousands of innocent individuals whose lives and careers will be tainted by running his test results. Third, random testing will be abused by employers as a way to harass and rid themselves of so-called problem employees. Fourth, there is a real problem that financially pressed airlines will use random testing not as one element of a comprehensive drug testing program but as the entire sum and substance of it.

Even though comprehensive employee assistance programs can be shown to be extremely cost effective, some unenlightened or financially pressed airlines will be tempted to go the cheap and dirty route, administer the drug test to everyone and simply fire those that come back positive.

Lastly, random testing as mandated by the government violates the Fourth Amendment of the Constitution. There have been several court cases supporting this position, and we feel that some day when it reaches the Supreme Court we will all find out that random testing has turned out to be a complete waste of time.

The Air Line Pilots Association takes a very hard stand against the use of drugs. However, we go beyond the question of testing if we are to really have an effective drug program. The way to drug and alcohol free cockpits is through a good rehabilitation program coupled with a strong professional standards program where on a pilot to pilot basis users can be brought out of the closet. Such a program has existed for alcoholic pilots for more than 12 years now. That is the HIMS program I refer to. Thus far we have successfully rehabilitated 600 pilots in our program and 200 pilots outside of our program. We have a long-term success rate of 93 percent. This is a resounding success by anyone's standards.

No working pilot is immune from the scrutiny under the union program. Everywhere he goes, in the cockpit, at home, at the airport, he is exposed to people who can and will report him and are taught to report him, for they save his life. The system watches him 24 hours a day, seven days a week. Random testing, which only looks at him once or twice a year, comes in a very poor second as a detection device.

Our goal then is to avoid random testing. Instead, we propose the ALPA HIMS concept, which deals with all substance abuse. This clearly is the only realistic approach to us.

Before concluding, let me briefly summarize some rather puzzling recent developments in the drug program. The advanced notice of proposed rulemaking that Secretary Dole spoke about this morning was issued on December 4th, and speaks to the fact there is very little evidence available about drug and alcohol abuse or to support drug and alcohol abuse in the aviation community. The advance notice in fact intended to solicit data so that the agency could determine whether a rule was necessary or not.

On January 21st, however—I just have another 30 seconds or so.

The CHAIRMAN. Go right ahead.

Captain STONE. On January 21, however, two days before the comment period closed, the Secretary of Transportation announced to the press that the department would be issuing regulations in which random testing for drugs and alcohol would play a prominent role. In other words, the Secretary apparently decided that random testing was a solution before the FAA could conclude preliminary rulemaking procedures. Our confusion as to the department's intent was compounded by the very fact that on that day the FAA allowed 30 days further for the comment period before it closed.

In conclusion, Mr. Chairman, I would hope that the committee would share our concerns over random testing, that we would work together to ensure that we put in place an effective program that emphasizes rehabilitation as well as prevention while maintaining the basic protections we all enjoy as free Americans, and I will be happy to answer any questions.

[The statement follows:]

STATEMENT OF CAPT. RICHARD B. STONE, AIR LINE PILOTS ASSOCIATION

Good morning Mister Chairman and members of the Committee. I am Richard B. Stone, Executive Chairman for Aeromedical Resources of the Air Line Pilots Association. The Air Line Pilots Association represents 39,000 professional airline pilots who work for 47 airlines. On behalf of ALPA I appreciate the opportunity to appear at this hearing to address the issue of drug and alcohol use as it relates to the airline industry and to discuss the legislation that you and Senator Danforth have introduced. It is our hope that these hearings will lead to the formulation of sound, rational policies that can be consistently and equitably applied.

As the Federal Aviation Administration observed in the Advance Notice of Proposed Rulemaking (ANPRM) issued on this subject on December 4, 1986, there is no evidence that drug or alcohol use is a significant problem in the airline industry. Since the beginning of commercial aviation in the United States—a period of more than 50 years during which hundreds of certified carriers have flown more than 100 million flights—there has not been a single U.S. scheduled airline accident attributable to alcohol or drug use.

Nevertheless, I doubt if any rational person isn't alarmed at what illicit drugs are doing to our society, and that includes airline pilots. *Expecially* airline pilots.

The cockpit of a modern jetliner has no room for drugs, alcohol, or any other substances that impair judgment and performance. Airline pilots recognize this. So does the FAA. Its rules forbid the use of alcohol, illicit drugs, and even some seemingly harmless over-the-counter medicines before getting into the cockpit. Pilots who are alcoholic or drug addicted *automatically* lose their licenses. ALPA members are fully aware of these rules and support them unflinchingly. Their lives and those of their passengers depend on strict adherence to these principles.

Accordingly, maintaining a drug and alcohol free cockpit is of major importance to ALPA. The way to drug and alcohol free cockpits, however, is through a good rehabilitation program coupled with a strong professional standards program, where on a pilot-to-pilot basis, users can be brought out of the closet. In this regard, let me tell you about a highly effective program to treat alcoholism that ALPA, in conjunction with the Federal Aviation Administration and most airlines, has developed and implemented over the years—the Human Intervention Motivation Study of HIMS program.

The HIMS program formally began 13 years ago with the assistance of a grant from the U.S. government. Funded, with matching money from ALPA, the program resulted in the establishment of a number of joint management-ALPA intervention, rehabilitation and preventative programs throughout the industry. The formal program has always included the FAA medical certification authorities as an integral part.

Let me briefly describe how this program works:

Any individual (another pilot, a company official, friends or family) can report a suspected alcoholic pilot to the union. Fellow pilots, trained in alcoholism intervention, approach the suspect and speak to him, peer-to-peer. The individual is persuaded to come forward voluntarily for help. He then is taken off flying duties and usually put on paid sick leave. The FAA, which has no latitude on this point, must take away his pilot's license. The alcoholic then is referred to a clinic for rehabilitation. If he successfully completes long-term rehabilitation, he is given his license back and returned to the cockpit, where he is monitored for a minimum of two years.

To date some 600 ALPA pilots have undergone this process (with another 200 being handled outside the ALPA program). The ALPA pilots have a 93 percent success rate in rehabilitation, which is a resounding success by anyone's standards.

No working pilot is immune from scrutiny under the union program. Everywhere he goes, in the cockpit, at the airport, at home, or at a party, the pilot is exposed to people who can and will report him. This system watches him 24 hours a day, seven days a week. Random testing, which only looks at him once every year or so, comes in a poor second as a detection device.

The HIMS program has developed an outstanding track record, with a reputation for results which benefit the membership and the industry as a whole. It is well-known throughout the industry and has been recognized nationally as a model of rehabilitation programs for professionals.

The HIMS concept is based on the idea that airline pilots are not closely supervised as are traditional workers; hence, the opportunity for supervisory identification of problem behavior is truncated. This requires the education of peers so that they who work together daily can recognize and identify problem cases and act to obtain assistance for their fellow pilots. The HIMS program concepts do not preclude normal company discipline; and they preserve employer, employee and FAA prerogatives.

Given the effectiveness of the program, coupled with its emphasis on rehabilitation rather than punishment, we believe that the HIMS program can and should be applied to the management of drug problems should they arise in pilots. In fact, as rare cases of drug use surfaced over the years, usually in conjunction with alcohol disorders, the HIMS concept proved flexible enought to encompass management of these matters.

Let me now comment on pending regulatory and legislative initiatives with respect to curbing the use of illegal drugs by industry employees.

As a preliminary matter we are confused by the actions of the Department of Transportation since it seems to be asking questions and giving answers at the same time. The ANPRM issued on December 4 by the FAA—the agency tasked with regulating air safety—indicated that far too little data was available about drug and alcohol abuse in the aviation community to even know whether it jeopardized air safety. The ANPRM was, if fact, intended to solicit data so that the agency could determine whether or not rulemaking was appropriate in this area. On January 21, however, two days before comments on the ANPRM wre due, the Secretary of the Department of Transportation held a press conference and issued a press release in which she stated that the Department would definitely be issuing regulations. The scope of these regulations was articulated with some specificity and included random testing for drug and alcohol use for persons engaged in the industry. The Secretary, however, gave no clue as to what information she had obtained since December 4 that would support this broad, complex and, in ALPA's opinion, constitutionally flawed program. Our confusion as to the Department's intent was compounded by the fact that on the same day the Secretary made her pronouncements, the FAA was extending the comment period for the ANPRM. In addition, the pending legislation, which is supported by the Department was introduced on that very day and calls for DOT to issue regulations requiring among other things, random testing. All of this without any hard evidence that airline safety has been compromised by drug and alcohol abuse by the flight crew.

ALPA's concern over this rush to judgment does not mean that ALPA opposes testing for drug or alcohol use in all instances. As I mentioned before, ALPA is extremely concerned about maintaining a safe flying environment as our very own motto—"Schedule with Safety"—indicates. Properly used and understood, there are times when testing may be useful.

However, ALPA categoricaly opposes random drug testing. This dragnet approach of searches, without probable cause or even the slightest basis for suspicion, is repugnant to the U.S. Constitution. It conflicts with the basic principle of the presumption of innocence.

Random testing means that any worker can, without notice, be required to submit to a drug test. On the surface, it has a certain appeal. "Catch all the addicts with random drug sweeps, get them out of here, and we'll solve the problem." We all want quick, easy solutions to the current problem, so we can forget it and move on to the next one.

Unfortunately, the matter is not that simple. Random testing has far too many drawbacks to make it *the* solution. In fact, it won't even work as *one part* of a broader, multifaceted approach to the drug problem.

First, there are the Constitutional issues. Random drug testing (i.e., being selected indiscriminately and without warning, on someone else's whim, to submit a urine specimen in the presence of a company or government official) is an inhumane and unconstitutional invasion of people's privacy. Of course, public safety must be protected too; but we need not throw out the Constitution to keep drugs out of the cockpit. In fact, we seem to be doing a good job of it without random testing.

Drug tests also are notoriously inaccurate. Studies have shown that as many as 100 percent of the samples submitted to laboratories were inaccurately analyzed. Even under good laboratory conditions, some common substances such as poppy seed rolls and over-the-counter cold medicines can give a false reading that drugs are present.

These "false positive" readings can ruin the lives and careers of thousands of workers. This is particularly true for airline pilots. Remember what I said earlier about pilots being scared at the thought of drugs or alcohol in the cockpit. The merest hint that a pilot is impaired by drugs can destroy the delicate relationship of trust and communication that keeps two or three pilots in a cramped cockpit working safety and efficiently for hours on end. Pilots are a close-knit group. As soon as word got around that "Joe washed out on the drug screen," Joe would be a pariah in every cockpit on his airline, regardless of whether or not the test was accurate.

There are legitimate worker concerns that random testing could be used by management to get back at employees who are viewed as "troublemakers." This would ruin the credibility and effectiveness of a company's *entire* drug treatment program. An even greater danger is that management will adopt the attitude that "We have random testing—why do we need all these other, expensive parts of the program like education and rehabilitation and such?" Any industry that is fighting to reduce costs in order to remain competitive—such as the airlines—will be pressured to skip the rest of the program and put all its eggs in the random testing basket. That, I can assure you, is a guaranteed formula for failure.

Finally, court decisions already are drawing a tighter and tighter noose around the entire practice of random testing. Anyone who is betting on random testing to solve the drug problem may find in the not too distant future that the whole issue is moot because the courts will have cut off that whole avenue of approach.

So if random testing is not the way to solve the drug problem, where do we go from here?

As I said before, airline pilots are not opposed to *all* types of testing. As a matter of fact, the pilots' union sees four types of situations where testing is acceptable. They are: pre-employment drug screening, testing after an accident, testing where there is probable cause, and testing during rehabilitation and the post-rehabilitation monitoring.

That is a pretty hard-line approach toward drug use. Despite this, certain proponents of random testing have attempted to portray the unions as "standing in the doorway with a baseball bat" on the issue of drug testing. Nothing could be further from the truth. As I said, we are *scared* of drugs invading the cockpit, and we want to take every rational step toward preventing that.

Our goal is to adapt the union's alcoholism program to include all substance abuse. It deals humanely with human problems. It does not violate the Constitution. It is efficient and effective. Employees, managers, the FAA and professionals in alcoholism treatment all have nothing but praise for, and confidence in, this program.

The only thing random testing offers is the opportunity for some to grab headlines with cheap shots and buzzwords. It avoids real solutions to a very real and growing problem in our society. Unless we want to shove American society and our Constitutional safeguards out onto the slippery slope of random testing, I don't see how there can be any question as to where we need to go from here.

In conclusion, Mr. Chairman, I would hope that the Committee would share our concerns over random testing and that we can work together to ensure that we put in place an effective program that emphasizes rehabilitation as well as prevention while maintaining the basic protections we all enjoy as free Americans. I would be happy to answer any questions that you may have.

The CHAIRMAN. Very good. We have as a correction here Mr. Robert Molofsky of the Amalgamated Transit Union. Mr. Molofsky.

Mr. MOLOFSKY. Thank you. I am legislative director of the ATU and I am here on behalf of our president, James LaSala, to present our union's views——

Senator DANFORTH. Could you speak right into the microphone, please?

Mr. MOLOFSKY. Yes. To present our union's views on the issue of alcohol and controlled substance testing in the transport industry and to stress the value of employee assistance programs as a means of addressing problems in this area.

We represent over 165,000 public transit workers in the U.S., including over 10,000 in the intercity bus industry employed by the Greyhound and Trailways Corporations principally. As you know, the two bills pending before this committee do not attempt to impose coverage over employees in the intercity bus industry. We believe, however that the legislation raises very serious questions, and we certainly welcome the opportunity to join in these discussions. Although we are not urging legislative action for our industry we believe there are several important ways we can work together with the industry and the Department of Transportation to maximize public confidence and safety in intercity bus travel.

The ATU views drug abuse and alcoholism as an illness. Those suffering from these diseases require treatment, not punishment. At the same time, substance abuse can pose health and safety hazards on the job and to those of the riding public. Accordingly, we believe that the problem of substance abuse ought to be addressed squarely and cooperatively by employers and unions. We share your concern that ensuring the safety of the riding public should be of paramount concern to all involved in the transit industry, and I can say without question that for decades the ATU and the other unions in the transport industry have been committed to maximizing the safety of the riding public, including direct participation in the war on drugs.

I believe all of us are here today not to question that no one should be allowed to drive a bus under the influence of alcohol and drugs, but rather what weapons, what most appropriate tools and techniques we can employ to ensure that this continues to be the case. An effective testing and treatment program should be developed and expanded by the local parties to help assure that this is true. However, if the debate and discussion today focuses primarily on provisions of this bill permitting the use of random testing, which we strongly oppose, then we may all lose an opportunity to work together in developing the appropriate array of alternatives to random testing which may be a much better way to address these public safety issues.

S. 356 and S. 362 contain several concepts which we are prepared to explore and discuss with this committee and the Department of Transportation. I refer specifically to the issues raised by testing based on probable cause or reasonable suspicion, pre-employment and post-accident testing where drug or alcohol use is suspected as a causal factor, as well as testing incident to the biennual exams.

These measures, which do not present the serious constitutional problems raised by random testing deserve more favorable attention by all who are concerned with this problem. In the area of testing, we vigorously oppose the unilateral implementation of random testing in the workplace whether by legislation or otherwise. Such programs are of questionable legality and serve only to create climates of distrust and intimidation in the workplace.

There is no evidence that they work, and the high cost involved takes away resources needed to establish and fund long-term treatment and rehabilitation programs. In our view, any and all testing to detect alcohol and drug impairment must indeed be based on observation of worker performance and objective findings of probable cause with the employee then subjected to reliable and verifiable tests followed by appropriate treatment and eventually reemployment.

We further premise our discussion of positive approaches to substance abuse by emphasizing that the transit and the over the road bus industries are overwhelmingly safe industries. The statistical evidence gathered by the Federal regulatory agencies currently involved in motor carrier safety issues has shown that the safety record within the industry is commendable and has been steadily improving over the last five years.

While we recognize the existence of drug and other substance abuse, we believe that where such abuse occurs it has affected only a minute portion of the total work force within the transport industry. We are unaware of any studies indicating a deterioration of safety standards in the industry or an uncontrolled epidemic of problems which would warrant new legislation in the area. We believe existing Federal safety regulations, if enforced, should provide the necessary safeguards to ensure and solve the drug and alcohol problem as it exists.

In this regard we would like to call to the committee's attention the new Commercial Motor Vehicle Safety Act, which sets new testing and disciplinary standards, including those addressing employees involved with drug or alcohol abuse. The point we wish to emphasize in this area is that present legislation as enacted by the

Congress already allows sufficient authority for the Department of Transportation to establish comprehensive regulations involving drug and alcohol use as well as to impose new Federal standards.

We believe therefore that new legislation is not presently necessary to deal with this issue. It would be preferable for the committee and its members to work with the DOT, as we are prepared to do, to ensure that effective administrative regulations are established which include the necessary employee safeguards as to testing procedures and appropriate rehabilitation and reemployment opportunities.

In closing, I wish to emphasize one final point, and that is, in our testimony we have highlighted what we believe should be constituted and included in any effective employee assistance programs. The ATU has been a leader, as have our other unions around the country, in negotiating these programs. We have done this through the collective bargaining process. We have done this at the bargaining table in face to face meetings with employer and industry groups successfully in numerous cities throughout the country. We believe that effective programs can work. They can help identify employees who have problems, educate them, and provide the necessary treatment and rehabilitation programs which we are all concerned take place.

We believe that the opportunity to expand on the negotiability of effective employee assistance programs holds the best hope for solving the problem that exists in our industry with respect to any drug and alcohol abuse.

Thank you. I, too, will be happy to answer later questions.

[The statement follows:]

STATEMENT OF JAMES LA SALA, INTERNATIONAL PRESIDENT, AMALGAMATED TRANSIT UNION

My name is Robert A. Molofsky, and I serve as the Legislative Director of the Amalgamated Transit Union, AFL-CIO. It is my pleasure to appear here on behalf of International President, James La Sala to present our union's views on the issue of alcohol and controlled substance testing in the transport industry and to stress the value of employee assistance programs as a means of addressing problems in this area.

The ATU represents approximately 165,000 public transit workers in the United States and Canada, including over 10,000 individuals in the inter-city bus industry employed principally by the Greyhound and Trailways corporations. Most of these workers are employed as bus drivers, maintenance and clerical personnel.

Mr. Chairman the ATU very much appreciates the opportunity to appear before your Committee and to reaffirm our long standing commitment to an industry free of drugs, alcohol and substance abuse.

As you know, the two bills pending before this Committee (S. 356 and S. 362) do not attempt to impose coverage over employees in the inter-city bus industry. We believe, however, that the proposed legislation raises very serious questions, and welcome the opportunity to join in these discussions. Although we are not urging legislative action for our industry, we believe there are several important ways we can work together with the industry and the Department of Transportation to maximize public confidence and safety in relation to inter-city bus travel.

The ATU views drug abuse and alcoholism as an illness. Those suffering from these diseases require treatment, not punishment. At the same time, substance abuse can pose health and safety hazards on the job, if an individual comes to work in an impaired state. Accordingly, we believe the problem of substance abuse ought to be addressed squarely and cooperatively by employers and unions.

We share your concern that insuring the safety of the riding public should be of paramount concern to all involved in the transit industry. I can state unequivocally that our commitment to safety is second to none. We do not believe, however, that the recent Amtrak/Conrail tragedy should be seized upon as a basis for trammeling important employee rights. It is beyond question that no one should be operating a passenger bus under the influence of alcohol or controlled substance. Effective testing and treatment programs should be developed and expanded by the local parties to help assure that this is the case. However, if the debate and discussion focuses primarily on provisions of this bill permitting the use of random testing, which we strongly oppose, then we may all lose an opportunity to work together in developing the appropriate array of alternatives to random testing which may be a much better way to address these public safety issues.

S. 356 and S. 362 contain several concepts which we are prepared to explore and discuss with this Committee and the Department of Transportation. I refer specifically to the issues raised by testing based on probable cause or reasonable suspicions, pre-employment and post-accident testing where drug or alcohol use is suspected as a causal factor, as well as testing incident to the bi-annual exams. These measures, which do not present the serious constitutional problems raised by random testing, deserve more favorable attention by all who are concerned by this problem.

Before continuing, I would like to call your attention to the Recent Resolution on Drug Testing and Employee Asssitance Programs adopted by the ATU in September 1986, at its 48th Tri-annual Convention in Toronto, Canada. This resolution accurately summarizes our views on the complex issues of substance abuse, employee testing and assistance.

Briefly stated, we believe the best approach in dealing with alcohol and drug abuse problems is to negotiate effective employee assistance programs for the treatment and rehabilitation of employees. In the area of testing, we vigorously oppose the unilateral implementation of random testing in the workplace whether by legislation or otherwise. Such programs are of questionable legality and serve only to create climates of distrust and intimidation in the workplace. There is no evidence that they work, and the high cost involved takes away resources needed to establish and fund long terms treatment and rehabilitation programs. In our view, any and all testing to detect alcohol and drug impairment must indeed be based on observation of worker performance and objective findings of probable cause, with the employee then subjected to reliable and verifiable tests, followed by appropriate treatment and, eventually, reemployment. The full text of this resolution is attached hereto.

We further premise our discussion of positive approaches to substance abuse by emphasizing that the transit and over-the-road bus industries are overwhelmingly safe industries. The statistical evidence gathered by the federal regulatory agencies currently involved in motor carrier safety issues has shown that the safety record within this industry is commendable and in fact has been steadily improving over the last five years, While we recognize the existence of drug and other substance abuse, we believe that where such abuse occurs it has affected only a minute portion of the total work force within the transportation industry. We are unaware of any studies indicating a deterioration of safety standards in the industry, or an uncontrolled epidemic of problems which might warrant new legislation in this area.

If existing federal safety regulations are vigorously enforced, no additional legislated solutions should be necessary.

In this regard, we would like to call to the Committee's attention the new "Commercial Motor Vehicle Safety Act of 1986" which was enacted in the final days of the 99th Congress. This legislation was designed to establish new licensing and safety regulations affecting the interstate trucking and bus industry as well as intra-state transit operations. This legislation establishes new federal and state requirements providing for: a) single national drivers licenses; b) employee and employer "notification" requirements obligating employees to notify employers and responsible state agencies of any violations of state and local laws relating to motor traffic control; c) minimum federal testing standards established by the Department of Transportation, including written and driving tests for all commercial motor vehicle operators; and, most significantly, d) new federal disqualification and suspension penalties for commercial motor vehicle operators found operating a commercial motor vehicle in violation of rules prohibiting: 1) driving under the influence of alcohol/drugs; 2) leaving the scene of an accident; and 3) using a commercial vehicle in a felony. In addition, the legislation imposes separate penalties for commercial motor vehicle operators involved in serious traffic violations as defined under the Act. Finally, it mandates a study by the National Academy of Sciences to determine whether the current blood alcohol content presumption for driving under the influence should be lowered from a .1 to .04 level.

Of Special significance to this committee are the Act's provisions mandating state compliance with the new standards under penalty of loss of federal highway aid funds.

The point we wish to emphasize in summarizing this new federal legislation is that the Congress has already acted to require the Department of Transportation to establish additional comprehensive regulations involving drug and alcohol use by commercial motor vehicle operators, as well as to impose new federal testing requirements.

We believe, therefore, that new legislation is not presently necessary to deal with this issue. It would be preferable for the Committee and its members to work with the Department of Transportation to ensure that effective administrative regulations are established which include the necessary employee safeguards as to testing procedures and appropriate rehabilitation and re-employment opportunities.

Overall, we believe that the enforcement of existing federal safety regulations, along with well designed employee assistance programs reflect the best approach to substance abuse issues. As discussed herein, we stand ready to work with the committee to explore the most effective ways of encouraging the development of these programs.

Our testimony would not be complete without saying a few words about the need for employee assistance programs. The ATU has pioneered in the development of negotiated employee assistance programs (EAP), principally in the city transit industry, which stress rehabilitation, education and re-employment as an alternative to unilateral employer disciplinary action. In our view, the assistance program is better suited to the needs of all concerned. In recent years, however, it has become increasingly fashionable for employers—public and private alike—to use drug tests to screen all job applicants and all employees or to force applicants and employees to submit to random testing as a basis for personnel decisions. We believe this is an unfortunate development which will not produce constructive results.

When unilaterally instituted, without clear standards and mandatory safeguards, such programs have victimized employees and jeopardized their careers without making any lasting contributions either to safety or to a drug and alcohol-free work environment.

We believe the sudden rush by employers and others into randomized drug testing programs is primarily due to the recent emergence of low-priced and easily performed testing methods, chiefly the EMIT urine test, and other body fluid tests such as blood and saliva, which have been readily sold to employers eager to obtain quick results.

Our experience with unilaterally instituted employee drug testing programs has been almost entirely negative. In the main, testing, when independently required by employer fiat, creates a threatening atmosphere not conducive to resolving problems in the work place. Discipline associated with such drug testing programs has usually been punitive, relying on discharge rather than rehabilitation under employee assistance plans, to deal with substance abuse.

Many of the tests companies use to screen workers for drugs and alcohol are very inaccurate, especially the ones companies use in volume. False positives—showing drug usage even though a person has not used illegal drugs—are 25 percent or higher for many tests, and the results of tests which purportedly screen for illegal drugs can be affected by the use of such common substances as cough syrup, caffeine, asthma medicine and other common chemicals.

What these tests actually mean and measure and their overall validity and precision is an issue which receives much too little attention from employers. Toxicology experts have stated repeatedly that the various body fluid tests:

do not measure impairment.

with varying degrees of inaccuracy can not tell time elapsed since substance abuse.

are often performed by non-technical personnel, yielding invalid results.

are performed in labs where no effort is made by employers to monitor quality and consistency of test performance and accuracy.

provide results which are used with no allowance made for false-positive results which are always present to varying degrees.

are performed in situations where documentation and identification of specimens may be non-existent.

For these reasons and others, experts have repeatedly stressed that these body-fluid "dip-stick" tests are not sufficiently validated when the results are to be used in adversarial proceedings, such as courts or arbitrations, or to form the basis for initiating discipline.

Even if such drug tests were reliable, they would reveal only which individuals had taken a drug during a prior interval of time, often encompassing a large amount of off-duty hours. Such tests cannot determine whether an individual is currently addicted to a drug, under the influence of a drug, or unable to perform job functions because of drug use.

Tests for drug and alcohol usage are thus of dubious value in dealing with the problem of impairment in the workplace. Few testing programs include procedures for workers to challenge inaccurate findings or secure relief from the results of error. The test results are too often used to discharge competent employees. Perhaps most important, the administration of these tests on a random or across-the-board basis is degrading to, and invades the privacy and physical integrity of those tested, the vast majority of whom use no illegal drugs at all.

Finally, the rampant spread of the body-fluid tests not only jeopardizes existing standards for just-cause discipline, but raises the possibility of more serious and far-reaching adverse effects on any worker who is subjected to these tests. These effects concern the vital matters of reputation, career and job opportunities. Workers with positive test results are accused, often without cause, of possession and use of drugs. They are then subjected to loss of jobs, ruined reputations and even prosecution and imprisonment. If these tests are to be accorded so much weight, the validity of test results should be beyond question. The test should provide proof of use and/or impairment on the job beyond any reasonable doubt.

Because these tests do not meet these standards, we believe that any drug testing program must be balanced by inclusion of the following employee protections:

1. Any testing program must not allow testing without probable cause. Random testing not only creates a climate of distrust, intimidation, and resentment, but fails to focus on the issue of impairment. Random testing is an overly pervasive, unnecessary invasion into workers' privacy. Testing to detect alcohol and drug impairment must instead be based on observations of workers' performance and an objective finding of probable cause.

2. Once probable cause has been established, inaccurate urine testing, particularly the EMIT test, must not be used against employees without validation by the more accurate gas chromatography/mass spectrometry (GC/MS) test. Although the GC/MS test itself is not 100% accurate, the EMIT is the least accurate of the body fluid tests. Its numerical results cannot be correlated with intoxication and the test should be subject to confirmation at all times.

3. The consequences of any positive test results must be referral to rehabilitation through an employee assistance program and not immediate discharge. A strong rehabilitation program will help eliminate repeated abuse of substances and associated threats to safety, and it will conserve valuable employee resources. Rehabilitation instead of discharge will also help protect the lives and careers of employees falsely accused due to the inaccuracies of drug tests.

4. An Employee Assistance Program, once instituted, should not be limited only to detoxification treatment or restricted only to the substance abusing employee. Treatment should be structured so as to involve the family of the plan participant and should include a comprehensive program of "aftercare", in order to maximize chances for rehabilitation.

We believe the collective bargaining process holds the best hope of developing effective solutions. The flexibility of this process makes it possible for the parties to reconcile the sometimes competing interests of addicted individuals with those of workers who do not use drugs and who wish to avoid the degradation of drug testing, yet at the same time do not want to be endangered by a co-worker who is impaired.

With respect to issues pending before the committee, we remain opposed to any legislative approach which would mandate drug testing by employers and in fact support efforts to prohibit such testing. In our view, the most effective way of dealing with problems as they arise in the workplace is to establish negotiated drug abuse plans and policies which carefully address the issues unique to the particular industry's environment and concerns. In this fashion the appropriate remedies, due process protections and other safeguards can be put in place by the parties.

We are also prepared to work with this Committee and the Department of Transportation to explore mutually acceptable proposals involving pre-employment, post-accident and other testing procedures based on probable cause as well as proposals to encourage employers to negotiate such assistance plans that implement these aims. Our mutual goal is obviously to assure a safe and effective transit industry.

Again, thank you for the opportunity to express our views on these issues and we look forward to working with you and the committee staff in the months ahead.

The CHAIRMAN. Thank you, sir.

Mr. McDougall.

Mr. McDOUGALL. Good morning. My name is Vernon McDougall. I am a representative of the Safety and Health Department of the International Brotherhood of Teamsters. On behalf of our general president, Jackie Presser, I want to thank you for inviting us to appear today to discuss ways to combat drug and alcohol abuse in transportation.

We understand that we were invited primarily because of our experience with these issues in the trucking industry, but our union also represents 35,000 workers in the airline industry, which is one of the main targets of S. 362 and S. 356. The IBT has taken a leadership role in combating alcohol and drug abuse. In 1986, General President Presser launched an ambitious program to educate our members and the general public about these dangers. We are providing today for your review several examples of the materials that have been developed as part of that program.

Under our National Master Freight Agreement, Teamster representatives have participated since 1984 in a jointly negotiated nationwide program with unionized trucking management on drug and alcohol testing. Covered employees may be tested only as part of their DOT physicals or when their employer establishes probable suspicion of being under the influence of drugs or alcohol.

I would like to point out, Mr. Chairman, that we in the IBT do not believe that we have a rampant drug and alcohol problem among our members. A survey we conducted last summer found that after two years of operation only about one-quarter of 1 percent of the Teamster members covered by the National Master Freight Program had been dismissed as a result of a positive drug or alcohol test.

We do not believe that Federal legislation is desirable in this area, but we think that any drug and alcohol testing program that can put a person's career in jeopardy must include very strict safeguards. Any screening test must be be confirmed by GCMS to reduce the risk of a false positive. Strict chain of custody procedures must be followed to protect the integrity of the samples. And laboratories must have their competence certified and proficiency tested on a periodic basis. Minimum standards must be set to define what constitutes a positive test. The Master Freight Program does a good job of providing these kinds of safeguards. I have attached a pamphlet describing this program to my written statement.

This brings me to the most important aspect of the testing debate, employee privacy. There is no doubt that drug and alcohol testing infringes on an individual's right to privacy. When testing is performed pursuant to Federal regulation, Fourth Amendment guarantees against unreasonable searches and seizures come into play. Federal regulation in this area also raises Fifth Amendment problems and due process issues.

We oppose any provision for random testing which affects Teamster members as an unreasonable intrusion on their constitutionally protected rights.

Finally, Mr. Chairman, I would urge you to view whatever alcohol and drug problems there may be in transportation in the context of the overall safety problems that have been growing steadily worse since deregulation. Specifically with regard to trucking, we do not think that the cause of safety will be enhanced significantly by imposing these kinds of additional laws and regulations on responsible employers and employees who are already complying with the safety requirements in such areas as hours of service and maintaining their equipment in safe condition and who already have good programs in place to combat drug and alcohol abuse.

For those irresponsible companies out there who are operating on a shoestring and trying to make money by violating safety regulations, we do not expect them to be fazed very much by drug testing regulations either. It would be far better for public safety to concentrate on enforcement of existing laws.

Thank you again, Mr. Chairman, for inviting us to present our views. I will be happy to respond as best I can to any questions you may have.

[The statement follows:]

STATEMENT OF JACKIE PRESSER, GENERAL PRESIDENT, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Good morning. My name is Vernon McDougall. I am a Representative of the Safety and Health Department of the International Brotherhood of Teamsters. On behalf of our General President Jackie Presser, I want to thank you for inviting us to appear today to discuss ways to combat drug and alcohol abuse in transportation.

We understand that we were invited primarily because of our experience in the area of drug and alcohol abuse education and testing in the trucking industry. But as you know, Mr. Chairman, our Union also represents a significant number of workers—about 35,000—in the airline industry, which is one of the main targets of S. 362 and S. 356.

The IBT has taken a leadership role among labor unions in combatting alcohol and drug abuse. In 1986, General President Presser launched an ambitious program to use the various communication resources available to the Teamsters Union to educate our members and the general public about these dangers, and what they can do to combat chemical dependency. We are providing today, for your review, several examples of the materials that have been developed as part of that program.

Under our National Master Freight Agreement, Teamster representatives have participated since 1984 in a jointly negotiated nationwide program with unionized trucking management on drug and alcohol testing. Covered employees may be tested for drugs and alcohol only as part of their DOT physical examinations, and at other times when their employer establishes "probable suspicion" of being under the influence of drugs or alcohol.

I would like to point out, Mr. Chairman, that we in the IBT do not believe that we have a rampant drug and alcohol problem among our members. Our view was supported by a survey we conducted last summer. We found that, after about two years of operation, only about one quarter of one percent of the Teamster members covered by the National Master Freight program had been dismissed as a result of a positive drug or alcohol test.

As you know, the FAA is currently soliciting comments on this very same subject. We will submit written comments to them next week, and I will make sure that this Committee receives a copy.

We do not believe that Federal legislation is desirable in this area. But we think that any drug and alcohol testing program that can put a person's career in jeopardy must include very strict safeguards.

Any screening test must be confirmed by GC/MS (gas chromatography/mass spectrometry) in order to reduce the risk of a false positive from the screening test.

Strict chain-of-custody procedures must be followed to protect the integrity of the samples.

Laboratories must have their competence certified. You cannot assume that any laboratory that offers its services to analyze samples of body fluids is capable of performing at the level of competence to which we believe people are entitled in situations where their ability to earn a living may be at stake.

In the program developed under our National Master Freight Agreement, a laboratory which wants to be approved for testing must be visited by a technical consultant agreed to by the union and management. He evaluates them on such matters as chain of possession procedures, personnel training and qualifications, equipment calibration, etc. After more than two years, we only have nine laboratories approved for any testing; only two have been approved to do all of the testing permitted by the contract.

Right now, there is no national program of proficiency testing to make sure laboratories are able to report accurate, consistent findings even when they don't know someone is looking over their shoulder. This problem was highlighted recently when one of the local television networks submitted spiked urine samples to seven Washington area laboratories. The laboratories reported false negatives for 82% of the samples. We believe the Federal government has an obligation to establish a proficiency testing network for laboratories to ensure good quality control.

Minimum standards must be set to define what constitutes a positive test. For example, we have learned that trace amounts of THC can be detected in a person's urine, even if they have not actually smoked marijuana, if they have been exposed in a place where other people were smoking it. Thresholds must be set to eliminate the possibility of unfairly punishing a person on the basis of such "positive" findings.

The program negotiated as part of the NMFA does a good job of providing these kinds of safeguards. I have attached a pamphlet describing this program to my written statement.

Which brings me to the most important aspect of the testing debate: employee's privacy. There is no doubt that drug and alcohol testing infringes on an individual's right to privacy. Moreover, it is clear that when testing is performed pursuant to federal regulation, the Fourth Amendment's guarantees against unreasonable searches and seizures come into play. Federal regulation in this area also raises Fifth Amendment self-incrimination problems and due process of law issues. We have and will continue to oppose any provision for random testing which affects Teamster members, as we believe it constitutes an unreasonable intrusion on their constitutionally-protected rights under the Fourth and Fifth Amendments.

We believe that the travelling public's safety can be adequately protected by limiting testing to probable suspicion circumstances and in conjunction with required recurrent physical examinations. We also believe that the development of such programs and procedures is ideally suited to the collective bargaining process, and not as a result of Federal regulation.

Finally, Mr. Chairman, I would urge you to view whatever alcohol and drug problems there may be in transportation in the context of the overall safety problems which have been growing steadily worse since deregulation.

Specifically with regard to trucking, we do not think that the cause of safety will be advanced significantly by imposing these kinds of additional laws and regulations on responsible employers and employees who are already complying with safety requirements in such areas as hours of service and maintaining their equipment in safe condition, and who already have good programs in place to combat drug and alcohol abuse.

For those irresponsible companies out there who are operating on a shoestring and trying to make money by violating safety regulations, we do not expect them to be phased very much by drug testing regulations either. It would be far better for the cause of public safety to concentrate on enforcement of existing laws.

Thank you again, Mr. Chairman, for inviting us to present our views. As we have in the past, the Teamsters Union will continue to support this Committee's efforts to make our highways safer. I will be happy to respond to any questions you may have.

The CHAIRMAN. Very good. We thank you.

Mr. Mann.

Mr. MANN. Thank you, Senator.

The public's perception, and unfortunately some Members of Congress, seems to be that railroad workers are trying to cover up an underlying problem and prevent testing. That is simply not the case, Senator. What we are seeking to do is not to protect those who are guilty of alcohol or drug abuse on the job. Rail labor opposes indiscriminate testing, and with that in mind I think we have an innovative and a realistic approach for you to consider. Hopefully, you can embrace it.

The cornerstone of what we are proposing to Congress is that there be a preliminary dexterity type test initiated and performed before there is the actual urinalysis or blood test. The way it would work is that there would be a random selection. That employee would then be given a preliminary dexterity test. That test would be very similar to a program by the Los Angeles Police Department that has been hailed by the Secretary of Transportation.

What that program entails is, they first give a preliminary physiological type test such as measuring the pulse rate, blood pressure, oral temperature, pupil size, your pupil's response to light and darkness, jerkiness of the eye movements, perspiration, and salivation. Then there is a second type preliminary test. It is a field sobriety test similar to what you receive when you are stopped by a policeman. You walk a straight line, and you touch your nose with your eyes closed.

If you fail that, then you would be given the urine or blood test. This has a number of salient effective and realistic factors. Number one, it still provides for the deterrent because no one knows when he is going to be targeted. This morning may be my day, so I am sent to the laboratory. A certified technican is going to be doing this preliminary testing as well as the urinalysis. The point here is, the employee is not going to know beforehand when he is to be tested. He is not going to be able to cleanse himself of alcohol or drugs.

Secondly, the public is going to be fully protected because you are going to weed out the thousands and thousands of employees who never use alcohol or drugs. The National Institutes of Drug Abuse as well as the National Highway Traffic Safety Administration, undertook a study of the Los Angeles Police Department program and they found in 98 percent of the cases the trained police officers were able to detect the use of alcohol or drugs, and in over 92 percent they were able to detect preliminarily what type of drug was used.

So, by the preliminary testing you are able to weed out initially all of those people who never use alcohol or drugs, and then those who may be suspect (those who have wide pupils or are perspiring or whatever) they would be tested. You also accomplish one other important fact. It is not nearly as costly as rounding up everybody and putting them through expensive testing. It is not just the cost of the initial test. If there is a positive test there has to be a further test, to verify the initial result. This is expensive because it should be the most advanced chemical analysis available.

So in a nutshell we are opposing strict random testing, yes, Senators, but we are giving you a viable alternative, something that will work and something that will protect the constitutional rights of employees.

Thank you very much.

[The statement follows:]

STATEMENT OF LAWRENCE M. MANN, RAILWAY LABOR EXECUTIVES' ASSOCIATION [1]

My name is Lawrence M. Mann.[1] I am the attorney for RLEA in this matter. The RLEA represents all the crafts of the railroad workers in this country.

It is not debatable that we must find appropriate means to rid the railroad workplace of all alcohol and drug use. The public interest demands that the transportation system be safe and free from alcohol and drugs. Railway labor wants to work together with Congress and the public in seeking ways to eliminate this dreadful cancer. To go directly to the point—railway labor will support a random testing procedure which would protect the individual against the complete and capricious loss of constitutional protections.

The public's protection, including some members of Congress, seems to be that railroad workers are trying to cover up an underlying problem by attempting to prevent testing. We do not oppose toxicological testing where some objective signs of alcohol or drug use exists. Railway labor does not seek to protect those guilty of alcohol or drug use on the job. However, we do oppose indiscriminate testing of thousands of workers who never use alcohol or drugs in employment, and for whom there is no suspicion of use.

S. 356 and S. 362 are deficient in a number of respects which I will point out. We believe, however, that our common goal of a safe railroad system can be achieved through several amendments to the pending proposals for random testing. Foremost, we propose that a preliminary detection procedure be required before a random blood or urine test is conducted. On October 10, 1986, the Secretary hailed a potential breakthrough for the detection of drug-impaired persons established in a program developed by the Los Angeles Police Department. There was a joint laboratory evaluation of this program performed by DOT's National Highway Traffic Safety Administration and the National Institute of Drug Abuse. Results show that specially trained Los Angeles police officers were over 98 percent accurate in identifying persons as having overt signs of being impaired at the time of the examination. In 927 of the cases, the officers correctly identified the class of drug that had been used. [Copies of the Los Angeles detection program and the Government's evaluation are attached to my testimony.]

This detection procedure, which railway labor supports in a slightly modified form, has several components. The subject person is first interviewed, then evaluated for alertness and responsiveness. Next, certain physiological symptoms are measured (including pulse rate, blood pressure, oral temperature, pupil size, pupil response to light and dark, eye gaze nystagmus, smoothness of visual pursuit, perspiration, salivation, condition of the tongue, and skin signs of drug abuse). Next, a field sobriety test similar to those used by police to test for alcohol impairment is performed. This includes: standing, steadiness and time perception; the ability to balance on one foot; ability to walk a straight line and turn around; and the ability to touch the nose with the eyes closed.

We are proposing a similar procedure for carrying out random testing of railroad employees. If an employee, in the judgment of the trained and licensed technician, "fails" the objective preliminary detection procedure, only then would the urine or blood test be administered. This approach has the dual benefit of uncovering persons who may be using alcohol or drugs, and also meets the conditions necessary to protect individual Constitutional rights. As an ancillary benefit, such procedure would eliminate the necessity to perform invasive toxicological testing on everyone while still adequately protecting the public.

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[1] American Railway & Airway Supervisors' Association, Division of BRAC.
American Train Dispatchers Association
Brotherhood of Locomotive Engineers.
Brotherhood of Maintenance of Way Employees.
Brotherhood of Railroad Signalmen.
Brotherhood of Railway, Airline, Steamship Clerks, Freight Handlers, Express and Station Employees.
Brotherhood of Railway Carmen, Division of BRAC.
Hotel Employees and Restaurant Employees International Union.
International Association of Machinists and Aerospace Workers.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.
International Brotherhood of Electrical Workers.
International Brotherhood of Firemen and Oilers.
International Longshoremen's Association.
National Marine Engineers' Beneficial Association.
Railroad Yardmasters of America, Department of UTU
Seafarers' International Union of North America.
Sheet Metal Workers' International Association.
Transport Workers Union of America.
United Transportation Union.

The tester must be a trained technician who has been certified by FRA or the National Institute for Drug Abuse as qualified to perform these preliminary objective procedures just described. He or she must be trained to detect symptoms of alcohol and/or drug use. The current FRA rule is defective in that it requires railroad supervisory personnel be given training of only three hours for detection of drug use. Such training is totally inadequate, and we suggest that a training program similar to that of the Los Angeles Police Department be required.

Railroad workers have experienced a significant amount of harassment associated with the current FRA alcohol and drug testing regulations. Both S. 356 and S. 362 potentially will extend the testing program to further intolerable job harassment and will create chaos. To alleviate this problem in the pending legislation, we are proposing that the random testing program be administered by the FRA safety inspectors. Based on a uniform and systematic selection the inspector will determine who will be tested and when. The trained and licensed technician will make the preliminary determination and decide if a further urine or blood test is warranted.

Any random test should be limited to no more than one per year. Existing FRA regulations already provide for testing after certain accidents and incidents, after specified rule violations, or if an employee is suspected of alcohol or drug use. There is currently no limitation on the number of times per year an employee may be tested under the FRA rules. Additionally, most railroads have testing programs beyond that provide by the FRA regulations. The opportunities for abuse and harassment are obvious. Therefore, a reasonable once per year limitation on the number of random tests should be included in the legislation.

In this regard we are proposing an amendment to provide appropriate legal remedies where an employee is improperly tested in violation of either the current FRA rules or a railroad's own testing procedures. In such cases an employee should be authorized to file a lawsuit claim to recover compensatory damages, punitive damages, court costs and attorney's fees. The existing procedures under the Railway Labor Act do not provide adequate redress to an aggrieved employee.

The pending bills are deficient in another fundamental respect. Neither bill specifically requires that any positive urine or blood test result be confirmed by a different testing method. Scientific studies are replete with data demonstrating that testing procedures, particularly the cheaper tests, are not reliable. Also, human error by the laboratory technicians further contributes to lack of confidence in the results. With the proliferation of testing laboratories and the increased competition, there has been a tendency to cut corners by the labs hiring less qualified personnel. Irrespective of one's position on testing, it should be done accurately. There is no quality assurance now. Obviously, the lack of reliable tests can cause great harm to an innocent worker who risks losing his or her job and being subjected to criminal sanctions.

It is necessary that employees not be penalized by loss in pay as a result of being subjected to the testing procedures. Therefore, we propose that employees shall be on duty for pay purposes, and shall be paid for all time involved in undergoing the testing procedures.

The random testing will create havoc with the current prevention and rehabilitation programs known as Operation Redblock. On the railroads which have Operation Redblock programs, they have been very effective in reducing accidents, injuries and deaths. Operation Redblock has been effective because it encompasses rail workers direct involvement in ferreting out alcohol and drug users. A random testing program places a further barrier in this cooperative effort. Therefore, we request that on railroads having Operation Redblock in effect, they would be exempt from the random testing requirement.

Next, all test results must be strictly confidential in order to protect the privacy of the workers. Only selected railroad officials need to be apprised of the results.

If you are truly interested in dealing with the entire problem, all supervisory personnel should be covered by random testing. The proposed bills are not sufficiently explicit to require the FRA to cover all supervisors. What is good for the goose is good for the gander. We understand that the Association of American Railroads would not oppose inclusion of supervisors.

One last item is a proposed form which is attached to be used by all railroads for the testing procedures. It has been very difficult to determine upon what basis the railroads have tested employees. This form will require the railroad to specify under what rule the testing will be conducted.

In conclusion, those who have been watching the ABC mini series "Amerika" can readily observe a society whose Constitutional freedoms have been taken away. It is scary, depressing and not unlike what railroad workers are facing in employment. Then, the Constitutional protections are too important to be eliminated by legislation such as S. 356 and S. 362. However, these bills can be corrected by the necessary amendments suggested in this testimony. The Constitutional objections will be satisfied, and still the safety of the public will be fully protected.

The CHAIRMAN. I cannot go along with your arithmetic. I understand, Mr. Mann, that we have got the same idea in mind. It will be random. However you state that to impose a random part, that we would only take a portion. We are only going to take a portion. We have to be realistic. However, you propose a dexterity test, then walk a straight line, and then other tests. I think at this point we'll be dancing around the matter. I can get a urinalysis and be long gone before I do all of that. It is far more expensive. Why am I dancing around the fire?

Mr. MANN. Because, Senator, I suggest you are not considering the rights of all those thousands upon thousands of employees who never use alcohol or drugs.

The CHAIRMAN. I am considering their rights.

Mr. MANN. They have rights, too.

The CHAIRMAN. That is right.

Mr. MANN. We feel they have constitutional rights, and our main purpose is to protect those people.

The CHAIRMAN. Well, there is a fundamental difference there. I mean, for the public good, the common carrier has a higher degree of safety and duty for safety, so that does not really disturb me as much as it obviously does several of you as witnesses. We are doing it for the public good, and it is well premised in experience. It does work. We have had witness after witness say that it works. It helps, and we know it. It is just common sense. We do not have a policeman for every mile of roadway. We do not enforce all the laws all the time. It is just physically impossible. However, my friends who come down to Hilton Head, they know they had better slow down going through Blufton. In fact, a fellow at the hotel coming and the fellow at the airport going will tell you, that there is a town down there that finances itself on speeding violations. As a result the word is out.

In a similar fashion, we want the word to get out, as has apparently happened with the Coast Guard and several others who have used this method. The word is out, and it has diminished the use of drugs, and it has had a very salient and very valuable effect.

Senator Danforth.

Senator DANFORTH. Mr. Mann, the brakeman and the engineer who were involved in the Chase, MD, accident would have passed your test or did pass your test with flying colors.

Mr. MANN. I tend to differ with you because, the Federal Railroad Administration's rules require training of a supervisor of only three hours, and no one can be trained to detect those under the influence of alcohol or drugs in three hours. He is just not trained to do that in three hours. Secondly, we do not know the condition of that supervisor who viewed that person.

Senator DANFORTH. How do you know the condition of whoever would view people in the field in the future?

Mr. **Mann**. Because our proposal requires only a trained, certified technician would perform the testing, including the dexterity testing. The railroads would not be doing it.

The **Chairman**. He may also be on drugs.

Mr. **Mann**. But Senator, based on that, then there is no reason to do any kind of testing.

Senator **Danforth**. I really don't understand the difference in principle, as a matter of fact, between some dexterity test and a urine test. I don't understand why it is more intrusive to take a urine sample than it is to test somebody's pulse, to hold somebody's hand.

I don't understand that.

Mr. **Mann**. Those who have been through it, Senator, feel it is very humiliating.

Senator **Danforth**. Well, I'm sorry for them.

Mr. McDougall, are drugs sold at truck stops?

Mr. **McDougall**. I think probably yes.

Senator **Danforth**. Widespread, right?

Mr. **McDougall**. I can't comment on that.

Senator **Danforth**. Advertised over CB radios?

Mr. **McDougall**. I'm sorry?

Senator **Danforth**. Frequently advertised, common practice.

Mr. **McDougall**. They may be.

Senator **Danforth**. Do you dispute that fact, that it is a common fact for drugs to be advertised over CB radios and to be sold at truck stops?

Mr. **McDougall**. No, I'm not going to dispute you, Senator.

Senator **Danforth**. Mr. Stone, how many pilots have been treated for alcoholism under the existing program?

Mr. **Stone**. Approximately 800.

Senator **Danforth**. 800 pilots have been treated for alcoholism under the existing program. You don't dispute the fact that some pilots are alcoholic, do you?

Mr. **Stone**. Absolutely not.

Senator **Danforth**. Do you dispute the fact that some pilots use drugs?

Mr. **Stone**. We find relatively little evidence of that kind of use.

Senator **Danforth**. Do you find any evidence of any use?

Mr. **Stone**. Some use, in approximately a 10-year period, if you compare the number of cases of alcoholism, the number we have rehabilitated, 800, there are a number that did not complete rehabilitation.

I'm sure that number is more like 12- or 1,500. Compared to that, we've seen about five cases of substance abuse, drug abuse.

Senator **Danforth**. You've found five cases, not through any testing, but just through eyeballing people?

Mr. **Stone**. There is a testing method. The testing method is the peer method and the peer system. There is a lot of misinformation.

Senator **Danforth**. By the peer system, you mean eyeballing by other people?

Mr. **Stone**. No, there is data collection. There is data collection that is necessary.

Senator **Danforth**. Are urine samples taken?

Mr. **Stone**. Absolutely not.

Senator DANFORTH. Are blood samples taken?

Mr. STONE. On occasion.

Senator DANFORTH. What method is used to determine whether or not pilots are on drugs in your system?

Mr. STONE. It is a peer review.

Senator DANFORTH. Peer review? It's just eyeballing. "I notice you're on drugs today." Is that right? That's the system?

Mr. STONE. You have to understand, we work for long periods together. But let's talk about—let me just divert that question.

Senator DANFORTH. No, please don't divert it. That is your system, isn't it? Just, "I notice you seem to be on drugs today?"

Mr. STONE. You're rather blase about it, but we're very proud of the fact——

Senator DANFORTH. I'm not blase. I'm very, very serious about it.

Mr. STONE. Well, I'm very serious about it, because that's how we do pick up the people in the system. There are cases of sick leave use. There's DWI information that's fed into the system. There are family members that contribute information to the system.

And it's a very comprehensive system.

The random drug testing system is a very simplistic system that does not provide real good information to you.

Senator DANFORTH. But even on the basis of what you call your system, even on the basis of what you call your system, you don't dispute that there is at least some drug use by pilots?

Mr. STONE. They're just like the rest of the population, and that's why we have a program in place.

Senator DANFORTH. The rest of the population, and some of them use drugs.

Mr. STONE. That's right, and if you listen to NIDA, the agency which you fund, there has been a decrease in drug use in the recent past.

Senator DANFORTH. I'm happy. I hope there's a decrease to zero. But the fact is that any pilot who flies, say, a 747 should not be on drugs. You agree with that?

Mr. STONE. Absolutely, sir. We don't want him in the cockpit.

Senator DANFORTH. And the public should be assured that they are not going to be using drugs, correct?

Mr. STONE. That's correct. But I want to make a comment, if you would allow me to, Senator, for instance, about the Conrail system. About the technical aspects of the tests that were given.

Normally, a preemployment screening is a sensitivity level in the emit tests. You understand that. You know enough about the emit system. The normal system is set at 100 nanograms. And that's what most companies base hiring information on.

Both the Conrail engineers had less than 100 nanograms in their system during the Conrail investigation. They would have been hired in any other place inside of a company.

And what that really speaks to is that their performance was probably not affected. That's why the level is set that way.

Senator DANFORTH. Well, I don't know about that. I mean, I don't know about performance, or about testing methods, or what the basis is for a particular level.

Mr. STONE. Well, the other thing that bothered me this morning was the fact that you think you can take a drug test at a truck stop, and before the driver leaves, decide whether he's positive.

Well, it's not a litmus test. Again, it's a lack of specific information which appears to be prevalent here. The stat labs, the fast-acting labs, can give you a drug test reporting back in about 24 hours.

So I don't know what good it would be to stop somebody for random tests, take a urine sample, let him drive off if he had drugs in his system.

I mean, that's not effective either.

Senator DANFORTH. You don't think it's a deterrent?

Mr. STONE. Not to abusers, not if you understand the addictiology; not if you understand substance abuse. Their judgment is impaired. That's why we try to get them out of the system as quickly as possible.

Senator DANFORTH. Mr. Molofsky, do you dispute that some bus drivers have an alcohol problem, and that some bus drivers have a drug problem?

Mr. MOLOFSKY. No, there's no dispute that some—I don't know what you mean by some, and it's probably not necessary to reach a percentage——

Senator DANFORTH. Are there bus drivers who have an alcohol problem?

Mr. MOLOFSKY. Yes, there are. The question is, how do——

Senator DANFORTH. Are there bus drivers who have a drug problem?

Mr. MOLOFSKY. There probably are.

Senator DANFORTH. There certainly are. I mean, there were a bunch of school kids—it happened to be a school bus, not an intercity bus—but about a year ago in the city of St. Louis a bunch of school kids were wiped out, killed, in the city of St. Louis by a bus driver who was stoned out of his mind.

You don't dispute that, do you?

Mr. MOLOFSKY. No, Senator, and I think everything should be done to make sure that that doesn't happen.

Senator DANFORTH. Well, I'll tell you what everything is. Everything is mandatory random testing.

Mr. MOLOFSKY. Well, that's a question that we'd like to explore more with you. Because what we've been experiencing in our programs in city transit and other unions in their own industries is that the way you diminish whatever amount, as small as we believe it is, the level of alcoholics or drug abusers in your system, is to create within the employment system a setting so that takes place.

And that involves a setting of trust, and openness and identification with employees who are the closest to their fellow workers, and with a management that is prepared to work with the union and the employees directly on an educational——

Senator DANFORTH. Here you had a Conrail situation where you had somebody trained to identify drug use, spent 15 minutes with these two people, and he didn't identify it.

And that is the system that you think we should rely on?

Mr. MOLOFSKY. Well, I think any system you have, including random testing, is not going to necessarily get the one person who we later learn has an accident.

And so the question is, do you focus the entire debate on the merits or demerits of random——

Senator DANFORTH. You think that it is just a terrible intrusion on somebody's privacy to give a urine sample if he is going to be driving 30 or 40 or 50 people in an intercity bus? It's a terrible intrusion to give a urine sample, every now and then, that really intrudes on your privacy because you don't want your urine examined?

Is that your testimony?

Mr. MOLOFSKY. I think without any evidence of job impairment, and given the constitutional rights, the privacy rights, and the protections that we all enjoy, that that is an abusive intrusion, and that the problem can be analyzed and solved in other ways that don't come close to——

Senator DANFORTH. It's an abusive intrusion of the right to privacy to give an occasional urine sample if you have 40 or 50 human lives in your hands?

Mr. MOLOFSKY. I think testing is worthwhile in a variety of circumstances. It's not abusive in itself. It can become abusive depending on the circumstances in which it's given. Preemployment——

Senator DANFORTH. It is not abusive in itself?

Mr. MOLOFSKY. I'm sorry?

Senator DANFORTH. It is not abusive in itself.

Mr. MOLOFSKY. Testing—the procedure, depending on how it's handled, can be abusive, it can have some safeguards attached to it.

What we're all talking about is what triggers the institution of that test.

Senator DANFORTH. What is abusive about random testing constituted on the basis of computerized selection? What's abusive about that?

Mr. MOLOFSKY. Well, it depends how——

Senator DANFORTH. The computer picks out the name, just out of a hat. What's abusive about that? Please urinate into a cup. What's abusive about that?

Mr. MOLOFSKY. Senator——

Senator DANFORTH. Please explain. This is the heart of your testimony that it's abusive to urinate. Now why? Explain that.

Mr. MOLOFSKY. Well, it's two parts. The first part is why I have to do it in the first place. That has to do with the selection itself.

Senator DANFORTH. Why you have to urinate?

Mr. MOLOFSKY. Yes. And secondly I suppose you're asking is the process itself, and how it's conducted, and what monitoring, what safeguards, what kind of test itself is applied.

Senator DANFORTH. Tell me first of all, sir, what is abusive about urinating in a cup. What's abusive about that?

Mr. MOLOFSKY. Well, I suppose in the privacy of my home or on my own, it wouldn't be abusive, unless it's a question of what compels me to have to do something like that in the first place, and what measurements are taken and how they're taken and what it is used for after it's performed.

Senator DANFORTH. You've given me no indication of anything abusive about a urine test. What is abusive about it?

Mr. MOLOFSKY. I've tried to explain it. If you're talking about the performance of a urine test in connection with a job issue, it's a question of why you were chosen and the process that you're called upon to follow in giving the test.

Senator DANFORTH. You're asked to urinate. That's the process. And the way you're chosen is by a computer on a purely random basis. What's abusive about it?

Mr. MOLOFSKY. Well, what may be abusive about the selection itself—is that what you're asking?

Senator DANFORTH. Yes. About anything. Just give me anything that's abusive about anything we're talking about. What's abusive? What's intrusive?

Mr. MOLOFSKY. We have a right of privacy. We have a right——

Senator DANFORTH. To take drugs while driving a bus? Is there a right to do that?

Mr. MOLOFSKY. No.

Senator DANFORTH. Is there a right to shoot yourself up with dope and fly an airplane? Do you believe there's a right to do that?

Mr. MOLOFSKY. No, and our outrage is as strong as yours.

Senator DANFORTH. Is there a right to drive a Conrail train under the influence of marijuana? Is that a new constitutional right? And where do you find that in the Constitution of the United States?

Mr. MOLOFSKY. We don't.

Senator DANFORTH. All right. Now, tell me what's intrusive or unreasonable about a random urine test run by a computer?

What possibly, conceivably, is intrusive about it? How did you sell your members on taking that position?

Mr. MOLOFSKY. We can sell our members on that position—not simply sell our members. It is a view that many of us share, that the way you solve the drug problem that you're describing, to solve and improve whatever problem there is in drug and alcohol abuse, is by a method that has more compassion to it——

Senator DANFORTH. Compassion? What is lacking in compassion about a urine test? What is lacking in compassion about being given a paper cup, and being asked, when you're going to the men's room anyhow, to please urinate?

Mr. MOLOFSKY. Senator, with regard to the process of performing that test under that circumstance, we have heard discussions today about monitors, about the reliability of tests, about what happens to the employee who is tested and what is the impact on his job and his family based on the results of those tests. That is what we're seeking to control.

Senator DANFORTH. Well, let's suppose he's positive. What do you think should happen to him? Have a nice day?

Mr. MOLOFSKY. No, sir. If he's tested positive, and the test is among the most reliable ones that we've talked about, then that person should be taken off the job and put into a treatment program and to see if he can complete it successfully.

And if that's true, and he can be tested after that to make sure that that's true, they can find a place for him again on the job.

Senator DANFORTH. Mr. Chairman, you have been very, very patient, and I appreciate it.

I just want to say, that the position that's taken by these four witnesses, that it is abusive and intrusive and unreasonable to have random urine tests to assure the travelling public that they're not going to be killed by some person on dope, that the position taken by these witnesses is the most ludicrous position I've heard in my ten years in the U.S. Senate.

Senator EXON [presiding]. I did not interrupt you, because I was very much interested in your line of questioning, Senator Danforth.

I would now recognize Senator Breaux.

Senator BREAUX. Thank you very much, Mr. Chairman, and I thank the members of the panel.

Let me first say that I have a tremendous amount of respect for professionals in the transportation business who every day, if you look at the other side of the coin, safely transport literally millions of people from point A to point B without any problems.

I have particularly a great amount of respect to airline pilots. I just marvel every day that you fly through not only bluebird conditions, but also through some terrible situations, and you do it safely with a great deal of professional competence.

But what I'm hearing, I think, from all of the members of the panel, and other previous witnesses, is that you don't mind testing of your employees as long as it's done on a scheduled basis. For example, as long as that person to be tested knows when the test is going to occur. You don't have a problem with that.

Mr. Mann, you said you had a problem with urine testing. Every physical consists of a urine test. You have a full complete physical on an annual basis where a person provides a urine test.

So I don't think it's safe to say that we just don't like the concept of a urine test. They're given on a regular basis. Every physical, annual or biennual physical, consists, if it's a good physical, of a urine sample. The objective is to test for a number of things.

So let me ask Captain Stone this question. In your testimony, you talk about the unconstitutionality and the inhumaneness of these random tests. Why is it unconstitutional to have a random test when it's not unconstitutional to have required annual physical tests. You have annual simulator tests to test the competency of a pilot to insure that he or she has kept current with the craft that he or she is operating. You have random FAA check rides, when an FAA walks into the cockpit of an airplane and says, guess what, captain, I'm riding with you; it's a random test. It's a random inspection of that particular pilot's competency to fly that plane.

It's not preannounced. The captain doesn't know when that FAA inspector is going to do the check ride. So we have random testing. We do it with the FAA inspectors.

So what I'm saying is, I don't understand the logic of everything that I've heard from the people representing a number of very professional people. They are saying, we don't mind the test unless we don't know when it's going to be given.

That tells me something. It tells me that maybe your employees are afraid of what those tests may show when they can't prepare for them.

What's the difference from the testing that we do now, as opposed to a random test?

Mr. STONE. Well, I'll let our attorney Gary Green answer the constitutionality issue, because it's a very poignant problem.

But let me use an analogy in aircraft maintenance. Why don't we do our maintenance on an aircraft on a random basis?

Senator BREAUX. Because we're dealing with a physical, mechanical thing as opposed to a human person which does not operate or breakdown on schedule.

We know when things wear out. We know when tires are not going to have enough rubber on them. We know that that is going to be a periodic check, regularly scheduled, because of the fact that it's a physical piece of material, as opposed to the human, which could not be programmed.

That's the difference on that.

Mr. STONE. But we do a lot of periodic testing. Like you say, we get tested in a simulator. I get tested by the FAA.

But let me turn this over to Gary Green.

Mr. GREEN. Senator, I'm a labor lawyer, not a constitutional scholar. But like a lot of other labor lawyers, I've had to learn when our members begin coming to me for advice, I had to learn what the Constitution taught us in the Fourth Amendment about their relationship with their government.

Now, we're not talking about what airline pilots can do on their own or through collective bargaining. We're talking here, and in my answer here to your question on random testing, of what the government can do, and what the government can compel the airlines to do to their employees.

On that basis, it occurred to me in my studies of the Fourth Amendment decisions by the Supreme Court that we have a very long, solid, honorable tradition embodied in the Constitution which we tend to forget under moments of public pressure.

We're under one of those now. You're under pressure now from your constituents to do something about the drug problem.

Senator BREAUX. What's unconstitutional? Do you think it's unconstitutional for an FAA inspector to walk into a cockpit and say, this is a check ride? Is that unconstitutional?

Mr. GREEN. Well, if I may continue to answer. I'm on the verge of an answer to your question about what's unconstitutional about random testing.

The tradition that's at stake here is how much power we give our government to invade our homes and our bodies. That's everybody. That's you as well as me.

The question is: How much power do we give our police? Up until now, I think the law has been quite clear, if I may overgeneralize, that the police may not search us without cause.

That rule has hindered investigations of much more serious threats to our security than the drug test.

Senator BREAUX. Mr. Green, the difference is, very, very obvious. The difference is, no pilot has to take a test unless he wants to fly;

unless he wants to take into his hands the public safety of 200 passengers.

He doesn't have to be tested. If he says, I'm not going to be tested, fine. Then he has to give up something else. And that's the right or the privilege to fly the plane with 200 other people in the back of the plane.

No one has ever objected to random FAA inspections, and that's a test. That's a test of that person's capability to fly that plane. It's unannounced, and if that person, that pilot, that captain, does a terrible job, his chances are that he could lose his license.

That's a random test of the highest degree.

Now, what we're saying is, what's wrong with a random test to determine his physical capability and make sure it's not impaired by a potential drug abuse?

Mr. GREEN. Part of the answer to that, Senator, is something which is so fragile and so slim that laymen are shocked when I tell them what it is, and Senator Danforth will not appreciate it at all, because he has no sympathy for it at all.

But what it comes down to is this—You will have no sympathy for my answer, Senator Danforth, for what I'm about to say. But I'm compelled to say it because it's based on what I've learned from the study of the cases.

Let me put it to you in the form of an anecdote, because we're going to have to talk about biological functions in a way that we don't ordinarily do it in as decorous a room as this.

Whether you go to RFK stadium to watch a football game, or Kennedy Center to watch an opera, there will be an intermission, during which half of the men in the audience at least will come forward to use the men's room. And you'll stand shoulder to shoulder and hip to hip with other men in the facility.

And you'll all go about the business of urination. And there's only one golden rule, that I have never seen violated, either at the opera or at the football game. And the rule is you don't look.

And that's what——

Senator BREAUX. Mr. Green, let me interrupt you. You're really missing the point. We're talking about something very serious. We're talking about the safety and life of people in some very difficult situations.

Your answer is totally unresponsive to my concerns.

Let me ask something else. I think you all have not been able to tell me the difference between the other random tests that we do of pilots which are accepted and now, and this one.

We have 800 alcoholics that have been found in your profession. That's not an insignificant number. Those people have been found without any real testing; only by somebody turning that person in. This is not done in society I think very often.

If we have that kind of a problem dealing with alcohol, I think that makes a strong case that random testing is something that is important to consider. We should move forward with it. It can be done.

However that's not taking away from the outstanding performance record, of pilots. I have a great deal of admiration for them. I really do mean that very seriously.

However, if one percent is guilty, it's affecting the careers of the other 99 percent. I think the other 99 percent that are drug free ought to take the position that it's their concern, too, and promote something that clears their good name.

Senator **Exon**. Senator Danforth has asked for one minute, and I'm glad to give him that, if he could try to keep it within that timeframe.

Senator **Danforth**. Well, Mr. Green, I will, just a couple, two, three, short questions.

Do you think that passengers at terminals who go through metal detectors are abused, or that that's an intrusion or violation of their Fourth Amendment rights?

Mr. **Green**. No. In fact, the Supreme Court and lower courts have already held that a person approaching a gate for the purpose of boarding an airplane has waived certain privileges that might otherwise exist——

Senator **Danforth**. Could passengers be searched for weapons?

Mr. **Green**. Yes, if cause appears.

If the magnetometer goes off that gives the police cause. I have no problems with that. Neither do the pilots. Neither do the pilots have any problems with drug testing as such.

Senator **Danforth**. Can the pilots' bags be searched?

Mr. **Green**. They can certainly be subjected to a sniff test by a dog, and if a dog gives a signal——

Senator **Danforth**. Their baggage can be searched, can it not?

Mr. **Green**. Yes, and the pilots have no problems with that, nor do they have problems with drug testing in and of itself so long as it is properly administered. Now, Captain Stone said one thing.

Senator **Danforth**. And when you arrive at Dulles Airport in an international flight and go through Customs, Customs can search your baggage, right?

Mr. **Green**. Yes, they can.

Senator **Danforth**. It happens every day, does it not?

Mr. **Green**. Yes.

Senator **Danforth**. On a random basis.

Mr. **Green**. Well, it is not exactly random. It is more like a check point, is it not, Senator?

Senator **Danforth**. I would say it is random. Some bags are searched and some are not.

Mr. **Green**. Well, the Custom agents will tell you that they are trained to identify which passengers seem most suspicious. They do not open your bags when you approach just on a whim or just because you are a Senator. They do it based upon their observations which lead them to conclude that there is a likelihood of finding contraband or drugs or something else.

Senator **Danforth**. Sometimes, and sometimes they just say, open the bag.

Mr. **Green**. Not on a whim, with all due respect. Not on a whim.

Senator **Danforth**. Do you think when they have looked through my baggage, which they occasionally do, they think it is because I am sort of a shaky looking guy?

Senator **Exon**. The answer is yes.

Mr. **Green**. On advice I will not answer that.

Senator **Danforth**. Thank you, Mr. Chairman.

Senator Exon. Thank you.

Gentlemen, I have reserved my remarks or questions until last. I think you were all here earlier and heard my opening remarks on this matter. I have listened very carefully because I have always listened to you and your organizations very carefully. I am not convinced that there is anything obtrusive about a urine test, and if one thing has been established by a vast majority of the committee is that urine tests in and of themselves are not obtrusive.

I have heard a lot of very good things here this morning from you and others. If we move forward in this area, which I predict we will, we have got to put in the proper safeguards to make sure that things are fair. Therefore when I hear talk about someone taking chemotherapy treatments which cause them to flunk the test, I recognize that is a problem, but it is one that I think would be relatively easily corrected.

When I hear, as I did just a few moments ago, that when you give someone a test and they happen to be loaded with some type of drugs we don't have the technology to determine if they are impaired. Therefore, unless you want to hold them up and take them out of that cockpit or take them out of that cab, they go about their way. The whole theory of random drug testing, as I think that Senator Danforth and others were trying to bring out, is the deterrent value of it.

I am telling you, gentlemen, that they are doing that today. You know they are doing that today. I know they are doing that today. And most of the people of the United States know they are doing that today. We have a very unique problem in this area, and when I hear some of the constitutional problems that I hear, and I suspect there may be some, Mr. Green, we are trying to work our way around that.

I also would tell you as an individual that knows many of the members of the unions that you represent here today, that I do not think you know what your membership feels about this. I suspect that you have not known the feeling of your individual unions with regard to certain recent political campaigns, especially the last two Presidential campaigns. The labor unions have been under more direct attack from the current administration than I suspect at any time that any one of us can remember, yet most of your membership went right out and voted for him.

I am not suggesting that you do not know what is going on, but I suspect that you are not as closely in touch with the membership of your union as maybe Ronald Reagan or Jim Exon. I think you are wrong on your basic premise that we cannot work this out. I think there have been some good suggestions made here today, and I am not automatically discarding all of them.

Mr. Mann, when you were before us on Tuesday, you said you would come up today and offer some specific suggestions, and you have, I for one am going to take a look at some of them. Therefore I do not dismiss your concerns out of hand. Many of the things that you raised here are the reason for this hearing in the first place, to try to get the input that we need from you.

I want to simply say that, as I indicated earlier, I think it is in the interest of the traveling public and the industries in which you have a key part as well as, from the standpoint of your membership that we have random mandatory drug tests in the form of urine tests. I do not believe that they are as much objecting to that as you seem to think they are. I would simply say in conclusion, gentlemen, that after listening to this hearing today and despite that I think you have been very sincere and very forthcoming in your statements this morning, I think you have chosen the position not to have mandatory testing.

I think by and large you have proved the point that some of us feel are necessary. It is fundamentally necessary as a result of the Amtrak accident, to impose random testing. We would not be here today if it were not for that. It could be a bus, it could be a truck, it could be an airplane tomorrow. I think the Congress is going to move on this, notwithstanding what I think are your objections. Although some of them are well stated, and some of them I tend to understand. We must seriously consider this move.

I would simply say to you that we want to continue to work with you, but I hope that you do not think, regardless of how well prepared you came here this morning, that you have been very effective in presenting your point of view. I have no further questions. If any of you want to make any final conclusions or statements, I will be glad to entertain them.

Yes, Captain Stone.

Mr. STONE. I resent the implication that our members have been irresponsible here this morning.

Senator EXON. I did not say you have been irresponsible.

Mr. STONE. That is what the implication was. Many times—in fact, I have a lot of members who say, we want to be tested just to prove it, and I guess what concerns me is the implication that all my members now are proved guilty, and I resent that.

Senator EXON. Proved guilty of what?

Mr. STONE. Proved guilty of using drugs.

Senator DANFORTH. Who said that?

Senator EXON. You are the only one that said that.

Senator DANFORTH. When did you get that?

Mr. STONE. The implication that that is why we have to have a drug testing scheme, is because we are all guilty.

Senator DANFORTH. Who has ever suggested that you——

Mr. STONE. That is what the random mandatory test says to me as an individual.

Senator DANFORTH. It says that you are all guilty? It says that everybody is using drugs?

Senator EXON. Captain Stone, I am leaving tomorrow for Chicago on an airplane that will be flown by one of your members. If I thought all of your members were using drugs I would not get on that airplane.

Mr. STONE. Let me tell you something, Senator. I have been in a number of treatment facilities. There is more pervasive use of drugs among Members of Congress and among the management than there ever was among union members.

Senator EXON. Well, I would say to you, Captain Stone, I do not know whether that is true or not, but you are missing the whole point. Members of Congress are not going to fly me to Chicago tomorrow.

Mr. STONE. They make our laws, though.

Senator EXON. They do make our laws. That is right. We are elected to do that. We are not appointed through the union process. We are here to make our laws and we will continue to make them just exactly as we see fit through the democratic processes that we have. I am not sure whether Members of Congress are using drugs, or whether management is using drugs. I resent your implication.

Do you have anything more?

Mr. STONE. I will guarantee you nobody on that flight crew will be using drugs or alcohol.

Senator EXON. I am delighted to know that. How can you guarantee it?

Mr. STONE. Because we have a very good and adequate peer review system. Nobody will allow somebody on the flight deck that is obviously under the influence of a drug or alcohol.

Senator EXON. We had exactly the same thing with the Amtrak wreck. In fact, they had a specialist see them ten minutes before they left the station, and they were clean. I do not suggest, Captain, that as great as pilots are, and I agree they are great people, that they have the wherewithal to look you in the eye and say, boy, you are free of drugs.

Mr. STONE. They do it every day in treatment facilities if they are properly trained. That is the poor information that I hear present this morning.

Senator DANFORTH. Mr. Chairman, one thing that I would just say in closing is that one thing that has come up in today's hearings is an interesting interpretation of the reason for some things that go on in the Congress of the United States.

Senator EXON. It is an explanation we have not had before. It is probably true.

Anything else?

Mr. MOLOFSKY. Just a final note. I would hope as you continue your exploration as to what to do with this legislation that you keep one final point in mind. We are, Senator, close to our members, and the one thing that the unions fight for their members in the workplace, is the very same thing that we are here today to explain and explore with you, and that is dignity in the workplace and the right to have our constitutional rights protected at all costs, not only from intrusion by our employers but from others. I think there is a very effective way, there are a variety of ways that we can all improve the drug and alcohol problem in the workplace, and I would like to think that a victory there will not simply be whether we institute random testing or not, but whether we work together to come up with and develop more effective employee assistance programs and to use the other variety of testing techniques, whether it is pre-employment, post-accident, and clearly probable cause and other identification techniques. I think through those methods we can preserve the values that we all share. Thank you.

Senator EXON. Thank you. Anything else?

If not, thank you for being here, gentlemen. We are adjourned.

[Whereupon, at 12:30 p.m., the committee was adjourned, to reconvene upon the call of the Chair.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF ALLIED PILOTS ASSOCIATION

This statement is submitted on behalf of the Allied Pilots Association, the representative of almost 6000 pilots employed on the American Airlines system. The group represented by APA is the most closely tested, severely regulated and successfully performing group of employees in this country.

The commercial airline pilot has, by the testimony of scores of millions of safely flown passenger miles, demonstrated his professionalism. The commercial airlines pilot is no less a professional than the medical surgeon. As much as the physician, the airline pilot recognizes his responsibility to the public and honors a code of ethics which determines his standard of conduct. This is not to say that, as in any profession, there are not those who fall from grace. However, the record of the commercial airline pilot, as a group, belies any accusation that this is a body which requires still further regulation and surveilance.

Clearly, the most offensive aspects of the proposed legislation are those which deal with "random testing." The Committee must appreciate that the regular testing which is part of the periodic physical review to which an airline pilot is subject, is far more frequent than that normally found in American industry. To this regular periodic testing is added the special testing provisions which are already found under FAA regulations. Those testing requirements would be enhanced and confirmed by the remaining provisions of the proposed legislation. The addition of random testing would add an insulting, unnecessary, and tension producing quality to the environment in which the airline pilot practices his profession.

It needs no citation to convince the Committee that, as in many other professions, the professional pilot must be able to work with his full attention directed to the exercise of his duties. His only anxiety should be connected with the performance of those duties and it can be injurious to his performance to have him work in an atmosphere of continuing apprehension that he may be pulled off the line and subjected to intrusive body fluid testing at any moment. If testing techniques were perfect, these objections would still be well founded. However, the fact is that a person's livelihood, professional status, and future may seriously be drawn into question because of uncertain testing techniques. He must constantly worry about the possibility that he may have been exposed to passive smoking of marijuana by simply having been in a room where that drug was being consumed, that he may have eaten a bagle with poppy seeds, or that the testing techniques have simply broken down as they do with some predictable frequency. Any of these causes may, on a random unanticipated basis, shock the pilot out of the normal performance routine which is the best guarantee to safe, sharply focused job performance. Again, the Committee should bear in mind that these random tests would not be based upon an evaluation of the pilot's job performance, but would subject him to a disruption of his career performance on the basis of questionable chemical reactions.

Whatever the impact would be on the pilot from such faulty readings as part of a regularized testing program, he can at least make some accommodation to them as part of the rhythm of job performance. There is no question that most pilots feel the tension and apprehension with every medical exam they must face and in which they must reach the highest of medical standards. However, the random testing proposal would impose that kind of tension and apprehension on an unrelieved basis which would uniformly and deleteriously characterize the pilot's entire flying career.

The Committee may already be aware of a testing policy which has been adopted in another branch of the transportation industry—the trucking industry. There, the union and industry representatives have agreed upon a program that requires urine and blood samples to be taken on three different types of occasions: after accidents; upon suspicion of substance abuse; or with thirty days advance notice, at annual truck driver physicals.

In an industry with a safety record far and inferior to that of the commercial airlines, those most affected have determined that a random testing program is not necessary.

We assure the Committee that APA and the American pilots take second place to no one in their concern for the safe operation of American Airlines. We have already mentioned their professional responsibility but we should not neglect pointing out the motivation of the pilots' own personal safety. If there is a danger, it is they who are exposed to it most frequently and as the saying goes in the industry, it is the pilot who gets to the scene of the accident first.

The judgment of the American pilot group is that the safe operation of the airline system will not be enhanced through a program of random drug testing and that such a program will add to the tension of the professional duties and will be to the ultimate detriment of safe performance.

STATEMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS

The Brotherhood of Locomotive Engineers appreciates the opportunity to submit for the record the following statement concerning Senate Bills S-356 and S-362 and the random testing issue. After many years of study, working experience and consulting experts on human behavior, working conditions and needs of railroad employees, the following comments are presented.

First of all, it is important to understand some basic facts about the substance abuse problem among railroad workers.

(1) The overwhelming majority of railroad personnel are rule-abiding employees.

(2) These employees do not condone the use of alcohol and/or drugs in the workplace.

(3) The overwhelming majority of workers do not want to work with those who consume or are under the influence while on the railroad.

(4) In almost every case, the fellow worker knows who the problem users are and can tell when his coworkers use occasionally.

(5) No fellow worker will report a rule-violating coworker when it will cost the imbiber his/her job.

(6) Many labor and management personnel participate in the conspiracy of silence.

(7) Some management personnel have alcohol and/or drug use problems.

(8) Our members express to us that Rule G violators should be taken out of service, but should not be fired on their first offense unless they refuse a rehabilitation program to help them overcome their problems.

(9) The "rule-enforcement penal approach" identifies and removes only about 1% of those who violate Rule G.

(10) It is a known fact sixty-five percent of all railroad accidents attributed to impairment (not sixty-five percent of all accidents—only those involving the use of alcohol and/or drugs) are caused by "occasional" users. These are people who do not necessarily have a problem with alcohol and/or drugs, but get caught short because of their random work schedules or for some other reason show up in the workplace under the influence.

To random test all railroad employees categorizes this population of workers as users and essentially tars the non-users and the user with the same brush. Testing provides no solution to the alcohol and drug use problem and will be very costly to implement, not to mention the logistics. Current drug testing statistics reveal that anyone involved in random testing runs a 1-in-5 to 1-in-6 chance of being incorrectly identified as a drug user and such accusations are very difficult to defend. This stretches beyond a rights issue to one that threatens a person's reputation, career and livelihood. Confirmatory tests on the wrong sample only make the matter worse.

The Centers for Disease Control (CDC) along with the National Institute on Drug Abuse (NIDA) conducted blind tests on thirteen of this nation's highly-regarded drug analyzing laboratories. As reported in the April 26, 1985 issue of the JOURNAL OF AMERICAN MEDICAL ASSOCIATION, there were error rates as high as 69% in the test findings which were a result of "serious shortcomings" in quality control.

If the Congress feels that random testing is the only solution, the BLE must ask what qualifications will be mandated for the laboratories that will determine the fate of the individuals involved. Currently, New York, Illinois and California are the only states that require licenses for drug testing laboratories and all other state's labs are uncontrolled and totally unregulated. Are we going to create a growth industry for fly-by-night testing laboratories?

The U.S. military currently estimates that each urine test including specimen procurement, transportation, analysis and reporting costs about $100 per test and this figure does not account for time lost from work. There are currently 266,000 railroad employees and considering the Senate request that every worker be tested every six months, we are talking $53 million per year. This does not address the problems associated with specimen identification or someone observing the urine flow from urethra to sample container, and most hospital physicians and technicians are refusing to witness same.

It is the BLE's understanding that the Association of American Railroads will call for post-accident testing after any minor accident, incident or rule infraction. There is a consensus among some railroad managers that anytime an employee makes a judgmental error or mistake even though there is no individualized suspicion of impairment, the person should submit to drug testing. This is an unjust and unreasonable form of discrimination. If such criteria is submitted to, it is the BLE's position that anyone tested for probable cause should removed from service until the test results are received and if they are negative, the employee should be paid for all time lost.

Something the BLE finds frustrating in some cases of probable cause testing involves crews that experience some minor mishap while setting off or picking up cars en route and a railroad official instructs the crew to continue with their train, but when they arrive at their off-duty point, the carrier subjects these employees to probable cause testing. If there is a probable cause to test these people, why are they allowed to continue their trips on the train? Allowing employees suspected of impairment to proceed with their trains is ludicrous.

There are several states that operate sobriety checkpoints on their highways. It is understood that all cars are stopped and there is a brief encounter with the driver. If there is established some suspicion that a person may be impaired, such an individual is singled out and requested to participate in a field dexterity test to determine if there is probable cause to test. An example would be to request that the suspect:

(a) Walk a staight line.
(b) Stand on toes.
(c) Stand on one foot.
(d) Finger to nose.
(e) Perform a physical task (a, b, c, d) while performing a mental task such as answering a question.

Once probable cause is established, the person is subjected to a sobriety test. Such a procedure is acceptable and certainly more palatable than to automatically assume that someone making a minor error connotes impairment.

The railroads certainly have the prerogative to stop and board any train at any time and, as part of an efficiency test, communicate with the employees to determine if there is any problem.

The time has come for everyone in the railroad industry to grab the bull by the horns and establish impairment cut-off levels for various mind-altering substances. For example, the FRA rule uses a .04 BAC for alcohol but allows the railroads to use more restrictive figures. All railroads insist on a .000 BAC. This certainly sounds proper, however, the state-of-the-art testing equipment is not perfect and has an error rate, and the testing machines are operated by humans with variable talents and knowledge. Even if the equipment and operators were 100% accurate, a person with false teeth or someone who recently consumed a lemon drop would fail an intoxylizer test as they would not register .000 BAC.

One railroad went so far as to declare it a violation of its operating rules for an employee to take a sip of wine from the chalice in the celebration of communion at church.

There has to be some margin for error with respect to any measurement and when the railroad industry is willing to address this issue, there will be a new surge of progress in the area of testing. The BLE can assure the Congress that the railroads in the United States do not function anywhere near perfect with respect to train operations or any other function performed by these companies. Having exact control of opposing train movements in dark territory or absolute compliance with the operating rules is a mandatory necessity in railroad operations and should be given proportionate emphasis by railroad managers. These performance levels should be insisted upon as perfect as opposed to the headstrong and stubborn quibbling over minute fractions between zero and an almost immeasurable quantity of a substance in someone's blood or urine.

It is a known fact that the problem of alcohol and drug abuse can affect anyone in our society as this disease does not discriminate because of age, income, socioeconomic status, sex or race. Therefore, if any random or other testing requirements are mandated by Congress, they should involve the entire scope of railroad employees including all levels of railroad management, up to and including the general managers and vice-presidents. They and their subordinates exercise authority in issuing instructions and orders governing train operations, and the on-board employees are required to comply with such instructions.

Currently, the Control of Alcohol and Drug Use in Railroad Operations; Final rule, as promulgated by the Federal Railroad Administration, prescribes thresholds where testing of railroad employees is mandatory and both urine and blood must be provided. This rule also provides that an employee may request that blood be drawn and considered as part of his test where conditions permit the railroads to exercise optional testing. However, there are no provisions to prevent a carrier from having a laboratory perform other tests on these samples, such as: pregnancy, leukemia, sickle cell anemia, AIDS, a review of past encounters with other sexually-transmitted diseases, or an entire genetic review to determine the probability, for example, that the individual will contract some fatal disease.

Such chemical snooping is certainly possible with today's state-of-the-art testing and analysis devices, and it takes little imagination to see corporate managers making lay-off or discharge decisions based upon this information.

There is a viable and well-proven alternative to all of this. Operation Red Block, the railroad industry's alcohol and drug use PREVENTION program, is second to no other industry program in addressing the substance-abuse issue *before the fact.* Red Block is the name of the most universally-recognized railroad signal which means "stop".

The emphasis of Operation Red Block centers on PREVENTION which is defined as preventing a coworker from consuming prior to duty and if this fails, an intoxicated person reporting for work is prevented from working. Someone consuming while in the workplace is prevented from continuing to perform their job. This is strong language and requires a firm commitment from labor. Workers have often demonstrated that they are capable and willing to meet the challenge when provided the opportunity.

Railroad employees mostly perform their duties in an unsupervised workplace and frequently report for duty and are relieved from the job at times and locations where no company officials are on duty. Management continuously emphasizes its responsibility to enforce and maintain a safe workplace yet because of the geographic layout of a railroad, it is impossible to police all work locations at all times.

An absolute or positive deterrent is needed. A line officer could be armed with an intoxylizer, a urine specimen cup, a syringe or even an atomatic weapon, but if they are not present to catch the intoxicated individual and utilize the support devices, what good are they? Unused detection devices are no more a deterrent than an absent supervisor and misuse of such equipment leads to harrassment and antagonizes good people.

Fellow workers given the necessary tools and the opportunity to participate in a PREVENTION program will provide the absolute or positive deterrent required in the railroad workplace. When labor becomes active in such a program, they recognize and accept the responsibility of maintaining a safe workplace and will take the necessary action to enforce safety. This removes the odds and eliminates the gambler. It is a tragedy in itself that some large railroads will not cooperatively work with labor in addressing this human problem.

The novel aspect of Operation Red Block is that for the first time in the history of the railroads, the employees have been given an opportunity to help design and implement a program which directly affects them. These are the people who lose their jobs, lives and limbs.

The working people have demonstrated, too often, the risks they will take before they will see their fellow worker lose his job because of his personal problems. In recognizing this fact, the need for a PEER REFERRAL PROGRAM becomes readily apparent.

Defensive measures should not be the primary method of resolving this problem. When using defensive measures, the problem is only dealt with after the fact. Once a person is caught, he/she is punished and this action is to serve as an example to deter others from doing the same. This does not work! 25,000 aclohol-related fatalities on our highways year after year demonstrate that the police penal approach is not an effective solution. Also, defensive measures alienate employees creating an atmosphere counterproductive to establishing an effective Peer Referral Program.

The PREVENTION philosophy changes the approach to this problem from one of Management v. Labor to that of Non-User vs. User. Our goal is to help 100% of all railroad pesonnel. The small minority who have problems with alcohol and/or drugs receive help and the majority, who are rule-abiding workers and have a right to a safe work environment, can now participate in a program which accomplishes this without jeopardizing a fellow worker's job.

The PREVENTION concept "reverses the peer pressure". No longer is the pressure on peers to cover for the user so that he will not lose his job; the pressure is placed on the user. The fellow worker knows who the users are and will PREVENT the impaired person from working if provided the opportunity.

It is time for progress and the BLE encourages Congess to push ahead with the winning PREVENTION concept as opposed to trying to mandate a new law that will be costly in time, resorces, careers, limbs and lives as we prove its inadequacy in solving this human problem.

STATEMENT OF THE NATIONAL-AMERICAN WHOLESALE GROCERS' ASSOCIATION

Mr. Chairman and Members of the Committee: I am Denis R. Zegar, Vice President for Government Services of the National-American Wholesale Grocers' Association ("NAWGA"). NAWGA is pleased to have the opportunity to submit this testimony on a subject of compeiling public interest and a matter of substantial concern to the business community: substance abuse by workers engaged in commercial transportation activities.

I. INTRODUCTION

NAWGA is a national trade association representing nearly 400 independent wholesale grocers and food service distributors. NAWGA member companies employ over 350,000 people grocery products and pvovide a wide array of services to retail grocery stores, hospitals, schools, restaurants and other food service establishments throughout the United States. Marketing products from nearly 1,000 separate distribution centers, NAWGA member companies account for nearly $60 billion of the nation's grocery product volume and ⅓ of the grocery supply distributed nationally. NAWGA's food service division, the International Food Service Distributor's Association (IFDA), represents member firms who sell annually over $10 billion in food and related products to the insitutional, away-from-home food service market.

Virtually all of NAWGA's member firms maintain extensive private carriage fleets to facilitate their food wholesale endeavors. Thus, NAWGA has a continuing interest in ensuring that the transportation industry directly addresses the substance abuse problems which currently affect the major segments of the industry. NAWGA has submitted Comments to the Department of Transportation regarding mandatory drug testing of commercial drivers, *See* BMCS Docket No. MC-116; Amendment No. 83-17, and those engaged in aviation activities. *See* FHA Docket No. 25148, Notice No. 86-20. NAWGA has also filed a formal petition with Secretary of Labor William Brock, requesting that the Occupational Safety and Health Administration adopt an occupational safety and health standard, which requires drug testing of forklift drivers and operators of other warehouse equipment in facilities which contain hazardous chemicals. *See Daily Labor Report* (BNA), February 10, 1987, p. A-4. NAWGA has also published manuals and held seminars for food industry employers on the pervasive problem of drug abuse in the workplace. As an association with strong ties to the transportation industry as well as a strong interest in preventing substance abuse, NAWGA welcomes the opportunity to submit its testimony in these proceedings.

The use of illegal drugs and the abuse of alcohol impose tremendous costs on our society. According to the most recent household survey conducted by the National Institute on Drug Abuse (NIDA), within the past 30 days, millions of Americans have used illicit drugs and abused legal substances, such as alcohol and prescription medications. In the last month, nearly 6 million individuals in the United States used cocaine, while more than 18 million used marijuana and hashish. According to NIDA, large numbers of Americans have recently made use of other substances, such as hallucinogens (nearly 1 million), inhalants (nearly 2 million), stimulants (2.7 million), sedatices (1.7 million) and tranquilizers (2.1 million). Furthermore, an estimated 12-13 million Americans are alcoholics or have serious alcohol problems. Of compelling concern are reports by treating professionals that a substantial number of those who take illicit substances use them on the job as well as during time away from work. It is simply unrealistic, and contrary to existing evidence, to assume that the workers engaged in commercial transportation activities are untouched by this national epidemic.

The transportation community as a whole must recognize and confront the realities of drug abuse within the industry. The recent January 4, 1987 Amtrak disaster, which killed 16 people and seriously wounded almost half of the passengers on the train, appears to have some connection to drug abuse. The engineer and the brakeman of the freight train which collided with the passenger train were found to have levels of marijuana higher than the amount commonly associated with behavior impairment. Notably, the engineer had also been arrested in early December 1986 on a charge of drunk driving and had a history of repeated moving violations. That such apparently drug-related disasters can occur in modes of transportation which are commonly perceived to have limited inherent dangers indicates that all reasonable precautions should be taken to avoid catastrophic events in the air, on the rails, and on the roads.

II. DRUG TESTING

NAWGA strongly supports the enactment of Federal legislation to help ensure that commercial transportation activities are drug-free, thereby promoting the public safety. Accordingly, NAWGA supports those provisions of the pending bills which would impose mandatory drug testing requirements on railroad and airline workers. NAWGA also urges that the scope of these measures should be expanded to include employees engaged in commercial motor vheicle activities where the public safety is at risk.

Random and Scheduled Tests—NAWGA strongly supports the concept of mandatory drug testing of workers involved in commercial transportaion activities on both a random and scheduled basis. The prospect of random drug testing has been shown to be particularly effective in decreasing the use of drugs by those persons who may be subjected to such testing. For example, the success of the military in reducing drug use among active duty personnel has been largely attributed to the deterrent impact of random, mandatory testing. *See, e.g., Los Angeles Times* (October 29, 1986), p. 33 (Navy seen as setting the standard for successful drug screening programs); *The Christian Science Monitor* (March 20, 1986), p. 1 (Pentagon surveys indicate that drug abuse dropped from 27 percent of active duty personnel in 1980 to 9 percent in 1985). Because individuals can never be sure when they will be tested, the only way to ensure that they do not test positive is to abstain from drug use. Notably, because many drugs remain in the system for an extended period of time, even infrequent use will be strongly discouraged by such a program of random drug testing. Scheduled drug testing, although it has the obvious disadvantage of being known ahead of time by the persons to be tested, will detect those individuals who are either habitual users or are addicted to drugs and cannot refrain from drug use. As noted above, such testing may further detect the presence of drugs which were taken well before the test period but which have remained in the body.

"Reasonable Suspicion" Testing—Drug testing should also be required when a reasonable suspicion exists for the belief that substance abuse is present. Substance abuse experts have identified numerous indicators of substance abuse, including: 1) weariness or exhaustion; 2) sleepiness or excessive yawning; 3) blank stares or slurred speech; 4) the appearance of depression or anxiety; 5) irritability or outbursts of emotions; 6) difficulties in concentration or lapses in memory; 7) absenteeism or repeated lateness, and 8) frequent mood swings. When determining if a reasonable basis exists for the belief of substance abuse, the totality of the circumstances, not just isolated occurrences, must be evaluated.

Pre-employment—Drug testing should also be used in pre-employment screening of job applicants for any commercial transportation position with safety-related functions. Many companies participating in the *NAWGA Model Substance Abuse Program* who have implemented pre-employment company-wide drug testing have obtained astonishing results, with firms seeing 10 to 50 percent of applicants testing positive for illicit drug use. Although this type of testing will be akin to scheduled drug testing (*i.e.*, a positive test result can be easily avoided by abstaining before the test is administered), it will identify those drug abusers who are addicted to the substances or are careless in the use thereof. Obviously, additional methods of drug testing will be needed to follow up the initial pre-employment drug screening.

III. TESTING PROCEDURES AND COSTS

A variety of technical methods are available to employers for drug screening through urinalysis. While critics repeat varying allegations regarding the technical sufficiency of existing drug-testing technology, according to NIDA, a number of methods are suitable for determining the presence or absence of a drug in a urine sample. *See* Walsh and Hawks, *Employee Drug Screening: Detection of Drug Use by Urinalysis,* National Institute on Drug Abuse DHHS Pub. No. (ADM) 86-1442 (1986), pp. 4-5. Accuracy and reliability of these methods must be assessed in the context of a total laboratory system. If a laboratory uses one of the suitable methods and follows good laboratory practices, then the accuracy of the results should be very high.

Employers bear the major responsibility to ensure that the drug-testing laboratories with whom they contract adhere to several important standards of performance. Laboratories should obviously maintain good quality control procedures, follow manufacturer's protocols, and perform a confirmation assay on all positives by a different chemical method from that used for the initial screening. Equally important are the so-called "chain of custody" procedures that are followed to document how and by whom the sample is handled from the time it is taken from the individual, through the laboratory, unitl the final assay result is tabulated. Such procedures are necessary to ensure the integrity and credibility of any drug testing program. NAWGA has taken great care to address these and other relevant questions in providing guidance to our membership and other employers.

While testing procedures administered to large numbers of workers will impose economic costs on employers, such expenditures need not be overly burdensome. In the long run, we believe that such sums will produce financial savings for companies with commercial transportation operations. By way of illustration, as part of the *NAWGA Model Substance Abuse Program,* (a reference manual, together with training and educational materials), NAWGA negotiated a group-rate contract with one of the nation's leading drug testing laboratories. That rate encompasses a charge of $10.00 for a preliminary drug screen for 8 major drugs of abuse together with "chain of custody" handling and verification, and a charge of $50.00 for the confirmation of all positive drug screens by gas chromatography/mass spectrometry (GC/MS). Companies both inside and outside the food distribution industry which have made use of these arrangements believe that the funds they are expending are well worth the investment. Surely, if NAWGA—an organization comprised of 400 companies—can negotiate such a price structure with one of the highest quality testing laboratories in the country, comparable rates will likely become available to other employers with transportation activities which become subject to statutory testing requirements.

IV. CONCLUSION

For these reasons, the National-American Wholesale Grocers' Association respectfully urges this Committee and the Congress to promptly enact legislation which mandates preemployment drug testing, as well as testing on a random, scheduled and "reasonable suspicion" basis of workers involved in commercial transportation activities. This Committee and the Congress can and should play an important role in reaching the universal goal of a drug-free transportation workplace. We respectfully urge that such legislation—expanded to include in its scope workers employed in commercial motor carriage activities—be enacted as soon as is practicable.

10600 Red Barn Lane,
Potomac, MD, February 25, 1987.

Hon. Ernest F. Hollings,
U.S. Senate,
Washington, DC.

Dear Senator Hollings: I would like to comment on the hearing, on February 20, 1987, of the Senate Committee on Commerce, Science, and Transportation at which the subject of mandatory random testing for drugs and alcohol was discussed.

My wife and I were parents of a lovely young lady, 20 years old, who was killed in the dreadful AMTRAK/CONRAIL accident on January 4, 1987, after which the CONRAIL crew were tested and found positive for marijuana. We were present at the hearing, and have very strong feelings about the testimony of some of the witnesses.

The apparent strong bipartisan support for strengthening legislation, especially with respect to testing, is very gratifying. The convictions that you and other members of the Committee expressed, so positively, that public safety requires early Congressional action, in spite of the determined resistance of some of the witnesses and the organizations they represent, were encouraging to us. We hope that you, the Secretary of Transportation, and others concerned, will be able to agree upon new legislation, and that it will be enacted quickly.

On the other hand, the testimony of the members of the panels, especially Panel #2, was appalling. For the parents of a lost loved one to listen to those witnesses brag about how "clean" their industry is, what marvelous safety records they have, how their problem is minuscule, is nothing short of disgusting and nauseating. Have they no sensitivity to, or awareness of, the fact that no matter how clean their members are, innocent members of the public are being killed?

We were grateful for the persistence of some of the Committee members, in particular Senators Danforth, Exon and Breaux, in their unwillingness to permit the witness to hide behind "constitutional rights" and "intrusion of privacy" when defending their extraordinary resistence to mandatory random testing. The witnesses claim to support testing, but their substitutes for mandatory random testing are simply unacceptable. For example, testing at scheduled times, such as regular physical examinations, would be useless because the employee will simply plan for the necessary period of abstinence. Also, testing for dexterity, or when there is probable cause, has been proven not to work. Witness the AMTRAK/CONRAIL accident, when the CONRAIL crew was observed by a representative of management for fifteen minutes just before departure, and the crash occurred an hour and fifteen minutes later. In post accident testing, both crew members tested positive for marijuana.

No matter how small a percentage of transportation workers may be users, the rights of the public to safe transportation operated by clean crews are far more important than the intrusion on privacy alleged by these witnesses. The lives of people are placed in the hands of those employees. If they cannot tolerate random, infrequent testing to increase safety for themselves, their colleagues, and the traveling public, let them find other employment. A well managed testing program, truly random by computer selection, may not eliminate all accidents due to drugs or alcohol, but will certainly act as a strong deterrent for users among transportation workers.

We earnestly request that you continue on your path to legislating mandatory random testing, including assignment of the responsibility to the appropriate agency of Government, perhaps the NRA, and eventually providing the required appropriations.

I would be grateful, Mr. Chairman, if this statement can be inserted in the record of the hearing. Thank you.

Sincerely,

Arthur W. Johnson.

National Air Transportation Association,
Alexandria VA, March 6, 1987.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Senator Hollings: The National Air Transportation Association represents the interests of the nation's on-demand air taxi airlines and airports service and support organizations, commonly known as fixed base operators or FBOs. Since air taxis operate as air carriers under Federal Aviation Regulations Part 135, and FBOs provide ground handling services to the air carrier industry, NATA is anxious to provide the Committee with our perspective on the issue of drug and alcohol testing in the air transportation industry.

NATA is keenly aware that drug and alcohol abuse is a major national problem and we reconfirm our support for public measures to help bring the problem under control. For example, the Association and our Members have supported efforts by the U.S. Customs Service to establish rules making it difficult to bring illegal drugs into the country. In addition, NATA offers an employment consulting service that advises Members on ways to ensure a drug free work environment. Even though we have taken these steps, we have found no evidence to support a belief that this malady is rampant in our segment of the air transporation industry and feel, therefore, that a broad national program as outlined in S.362 and S.356 is not warranted.

Our review of National Transportation Safety Board records reveals that drug abuse accounts for only one-half of one percent of fatal accidents, and alcohol is involved as one of the factors in seven to eight percent of accidents with fatalities. These percentages include both flight and ground crews.

Certainly strong action must be taken to ensure that drug and alcohol abusers are not allowed to operate in the air transportation system, but the Committee must keep the "problem" in the proper perspective when developing legislative remedies.

Even though we can find no evidence of a national threat caused by NATA's constituents, our Members may consider support of a pre-employment testing requirement, testing after an accident, or testing for just cause. Our Members feel strongly, however, that since the "benefits" of such testing requirements would accrue to the general public, the costs should also be borne exclusively by the public.

In summary, the National Air Transporation Association does not believe that substance abuse in the air transporation industry, and especially in fixed base and air taxi operations, is of the magnitude to justify programs proposed by the Committee. If, however, Congress chooses to proceed with these proposals, they should not include random testing, and all costs of the program should be borne by the government.

Sincerely,

LAWRENCE L. BURIAN,
President.

STATEMENT OF NATIONAL TRANSPORTATION SAFETY BOARD

The Safety Board welcomes the opportunity to comment on the critical issue of alcohol and drugs in the rail and aviation industries. We wish to commend Senators Hollings, Danforth, Dole and Gramm for their efforts to address this most serious safety issue.

The Safety Board has shared, for many years, the Committee's concern for the threat to transportation safety posed by alcohol and drug-impaired individuals. As far back as 1974 the Board called for the FRA to "prohibit the use of narcotics and intoxicants by employees" in the rail industry. That same year we also called for the FAA to improve their efforts to identify airmen with alcohol problems. As evidenced by our ongoing investigation of the recent Conrail-Amtrak collision in Chase, Md., the Safety Board's continuing concern is well founded.

The NTSB would like to offer the following specific comments on S. 362 and S. 356. We will address the major provisions applicable to railroads, first, followed by comments on the aviation provisions.

RAIL

Random Testing.—The Safety Board recommends an alternative approach to random testing—one that is not fraught with unresolved constitutional issues, and one that appears to be working. The Southern Pacific Transportation Company, since 1984, has had in place a fair but firm policy that makes it clear that alcohol and drugs have no place in their workforce. Supplementing their traditional, standard railroad "Rule G" prohibitions against alcohol and drug use while on the job are several key provisions. First, pre-employment drug and alcohol testing is required for all employees. Second, drug and alcohol tests are performed for safety related personnel in conjunction with standard, periodic medical examinations. Third, and perhaps most significantly, a broad "just cause/reasonable suspicion" testing policy is in effect. Not only hours-of-service but other safety critical employees are subject to drug/alcohol urine testing. The Southern Pacific believes, as do we at the Safety Board, that the drug-impaired mechanic who fails to repair a brake system properly or a drug-impaired clerk who miscodes a hazardous materials-bearing train, causing it to be routed through a large city, compromise rail and public safety as much as a drug-impaired engineer.

Impressively, the Southern Pacific program is saving both lives and money. In 1983 (pre-policy), this railroad suffered 911 human error accidents resulting in damage losses to the company of $6.4 million dollars. After three years under their new alcohol/drug program, human error accidents dropped to 168 with a resultant $1.2 million in damages. During the first few months under their testing program, 22–24% of crewmembers involved in human factors accidents were found positive for drugs or alcohol. The tests in early 1987 have found only 2.3% of crewmembers positive for alcohol or drugs. Southern Pacific has gone from 11th to first place in the prestigious Harriman Award standings, the railroad industry standard for safety.

The Safety Board believes an alcohol/drug program such as the Southern Pacific's is a reasonable and apparently effective approach to the problem of alcohol and drug abuse in the rail industry—an approach that should be tried before measures such as random testing are implemented.

Application of the rules to other employees.—The Safety Board consistently has advocated the application of the FRA alcohol and drug rule to all employees in safety critical positions. Data from the Southern Pacific indicates the inappropriately narrow scope of the current FRA rule. If the SP had restricted their testing program to those accidents subject to the FRA rule, only 24 of the 168 (14.2%) human error accidents in 1986 would have required crew alcohol/drug testing.

AVIATION

Testing Program.—As expressed above, the Safety Board supports the use of preemployment drug/alcohol testing, testing for "just cause/reasonable suspicion" and testing in conjunction with periodically required medical examinations, in addition to post-accident/incident drug and alcohol testing. We believe that a program that encompasses these measures can create an effective system to detect and deter alcohol and drug use by employees. Such an approach should be tried first before embarking on a radom testing program.

The Safety Board recommends that all employees in a position to affect the safety of flight operations should be subject to any alcohol/drug rules and testing programs that are promulgated. In this regard, we note that S. 356 specifically includes mechanics as subject to testing, while S. 362 is unclear on this point.

Rehabilitation Programs.—The Safety Board supports the requirement that a rehabilitation program be available which identifies and provides treatment for employees with alcohol or drug problems. Such a recommendation previously has been made to the FAA.

Again, we appreciate this opportunity to submit our views on S. 362 and S. 356, and request that these comments be placed in the record.

12101 Falls Road
Hunt Valley, Maryland 21030
February 28, 1987

Senator Ernest F. Hollings
United States Senate
Washington, DC 20510

Dear Senator Hollings:

Please allow me to comment on the hearings held on February 20, 1987 by the Senate Committee on Commerce, Science, and Transportation. I have a particular interest in this matter because my 16 year old daughter Ceres was killed in the Amtrak/Conrail crash on January 4 while she was returning to her freshman year final exams at Princeton University. Out of a decent respect for the memory of Ceres and the other fifteen victims of that crash, it is important that you and your colleagues use the lessons learned from it to write new laws that will make such a tragedy less likely in the future. In an attachment I have described in detail six proposals that I hope can be considered seriously as your committee drafts legislation, but let me comment specifically on the matter of drug and alcohol abuse as it relates to public safety in interstate transportation.

While we must all be sensitive to the constitutional protections that make America the land of the free, there is a growing consensus that society must take steps to protect itself and its citizens from the predations of substance abusers. Drug-impaired employees who threaten public safety are internal terrorists who must be stamped out, and there seems to be no practical alternative to mandatory random and probable-cause testing along with pro-active voluntary treatment programs. The Conrail engineer who apparently caused the crash was quoted in the newspapers as saying that what he did on his own time was his own business, but of course that is completely outrageous when what he does on his time affects the safety of the public. No one has an unqualified **right** to be an engineer or pilot; such a position of public trust is a **privilege** that carries with it certain obligations, and we can reasonably hold such persons to a higher standard of behavior than the average citizen. Clearly written legislation that deals with this problem effectively is needed if we are to avoid the spectacle of protracted challenges in the courts to ad hoc executive attempts to deal with this problem based on less-than-crystal-clear statutes.

Drug tests are only one of several ways used successfully in the nuclear power industry to identify potential substance abusers; many troubled employees give evidence of their problems through poor driving records, arrests for criminal matters, and medical problems. Unfortunately, most of this kind of information, even where publicly available, is not readily accessible and is not now being used in the transportation industry to evaluate the fitness for service of safety-critical employees. There is no central data bank to receive information about these people, so even if one company acquires vital information about a transient employee, the next employer may remain ignorant of it. Moreover, rail industry executives testified in Senator Exon's subcommittee hearings on February 17 that their current labor contracts would prohibit them from using this information even if they had it. Uniform licensing (as a means to require data collection) and a public national data bank for the transportation industry (to receive these data and make them available) are discussed in the attachment. Proposals by Representative Collins and others to use the National Driver Registry to obtain some of these data are seriously flawed, but such proposals express a need for the kind of quality data that should be available in a national data bank for the transportation industry. I would be happy to discuss technical aspects of creating and using such a data base with you or your staff if that would be helpful.

There is now ample empirical evidence that direct observation of employees, even by trained supervisors, is not always effective in identifying substance-impaired employees. The most recent instance of failure of direct observation to detect employees who shortly later tested positive for drugs was, of course, the recent Amtrak crash itself. Please do not allow proposals to require positive direct observational evidence before testing to deflect you from doing the right thing here. The travelling public has rights, too!

I hope it will be possible to include these comments and the attachment in the formal record of the February 20 hearing.

If there is any way I can be of assistance to you and your colleagues as you write the final version of your bill(s), please feel free to call on me.

Sincerely yours,

Roger A. Horn

Roger A. Horn, Ph.D.

Attachment

My name is Roger Horn. I am a professor of mathematical sciences at Johns Hopkins University in Baltimore. I have no professional expertise in the transportation industry; my qualification to present some ideas on transportation safety is that my 16 year old daughter was killed in the January 4 Amtrak crash while returning from our home in Baltimore to Princeton University for her freshman year fall term final exams.

At first it seemed that this terrible event was a random accident, the sort of thing that, despite the best-engineered controls, may occasionally happen in an industry that otherwise enjoys a laudable passenger safety record. But as the days have passed and initial investigation findings have been released, the horror of the crash has been compounded by a growing realization that it was entirely preventable and resulted from violations of common sense by railroad employees, managers, and regulators.

Those of us who have suffered most directly from this tragedy hope that it may be a stimulus to the Congress to enact new legislation that will restore the faith of the travelling public and make a repetition less likely. We also hope that the Executive Branch, through the Department of Transportation and the regulatory agencies, will increase their vigilance on behalf of public safety and will actively seek new authority from Congress for this purpose where necessary. Although our thoughts are naturally focussed on the railroad industry, the safety issues we are discussing are common to all forms of interstate transportation, and the following suggestions apply to all of them.

There are six specific areas that should be considered for new legislation and/or more active regulation:

1. **Uniform Federal Licensing.** All operating personnel in interstate transportation (airline, train, truck, bus, barge, etc.) should be required to hold a current federal license. The primary purpose of the federal license should be to get all licensed personnel into a national data collection system. It would also record in a central location routine medical examination data and the type and timing of training programs undertaken, most under industry sponsorship, and therefore will assure the public that at least minimal training standards of skill are being set and met. Each license holder should have to apply for license renewal periodically, at which time a review of his or her record would be triggered. No one should be permitted to be an operator of an interstate transportation system unless he or she has a currently valid federal license.

> The type of licensing being proposed is neither onerous on employees nor expensive to administer; it is primarily a means of registration and data collection. Unless future experience indicates that detailed and costly testing of licensees by federal authorities would be cost effective, it should not be undertaken. Primary responsibility for ensuring that operating personnel are properly trained would remain with the management of the transportation companies, but company management should be made personally responsible for discharging this important responsibility.

2. **National Data Bank.** There should be a single national computer-based data bank containing specific information on all Federal transportation license holders and interstate transportation companies. It should contain: Basic identification data, summary cumulative information on training programs completed and routine medical examinations, and a cumulative record of reportable events. The data bank should be available on-line to the public, and ease of public use should be a primary criterion in its design. Sample data elements are listed in Attachment I. The cost of operating the licensing system and national data bank could be met by license fees paid by individual license holders and fees paid by interstate transportation companies based on the number of their employees licensed.

> It is absolutely essential that the data be available for press and public scrutiny and that it be organized in a way that makes on-line computer access and searching convenient. Modern computerized database technology makes the achievement of all these objectives easy and economical. There is no need to identify license holders by name in the public data bank; identification by permanent code number is adequate for public data analysis purposes. The federal licensing authority would have a complete cross reference file of code numbers, license numbers, and names, and each transportation company would have a similar cross reference file for its own employees.

3. **Reportable Events.** Each federal transportation license holder and interstate transportation company should be required to report promptly to the national data bank, with standard forms, every instance of certain reportable events: arrest on any criminal charge, citation for any automobile traffic violation, suspension of automobile license, safety violations on the job, accidents on the job, specific medical events, substance abuse, completion of substance abuse rehabilitation programs, citation by regulatory agencies for safety or operating violations, etc. The disposition of any reportable event must also be reported. The requirement to make a timely, accurate, and complete report should be given teeth by a criminal penalty for failure to do so. Regulatory standards should be developed that require a fitness hearing for any license holder whose record meets certain standards, together with grounds for suspension or revocation of a license.

> The clear light of publicity may be more effective and less costly than reams of regulations in encouraging adherence to safety rules and sound operating procedures. A history of chronic disregard of rules or a pattern of personal or corporate behavior indicating a need for further scrutiny would be apparent in the cumulative record of the data bank. With such data available, management can be made clearly responsible for continual scrutiny of the fitness of their employees for public trust and can require early programs of counseling and rehabilitation for troubled employees before they cause a catastrophe. See Attachment IV for the traffic conviction record in only one state (Maryland) of the Conrail engineer in the January 4 crash. It lists 12 convictions and 2 license suspensions through December 11, 1986; an arrest on December 5, 1986 for drunken driving and running through a stop sign and a red traffic light (actions very similar to what he apparently did a month later on the railroad) is not shown on the record since trial is not scheduled until March 4, 1987. The public cannot understand why a person with a long history of automobile traffic violations, indicating chronic disrespect for laws and rules, should ever be entrusted with operating responsibility in public transportation, which requires rigorous adherence to laws and rules.

4. **Dealing with Substance Abuse.** Every interstate transportation company should be **required** to have in operation a pro-active program for voluntary and cooperative identification of, counseling for, and assistance to substance abusers. Identification, prevention, and rehabilitation should be the first line of defense against substance abusers in both labor and management. Self-identified first-time substance abusers who enroll in the voluntary program should be dealt with on a non-disciplinary basis. A program of required testing both for probable cause and on a fair random basis is also necessary for federal licence holders, **not as the only way** to deal with substance abuse, but as essential components of an overall program designed to ensure a workplace free of substance abuse. The primary purpose of random testing is to encourage voluntary participation in the pro-active voluntary program. The reportable events component of the national data bank can be useful in identifying patterns of behavior that may be associated with substance abuse.

> The public has a right to know that the persons operating their transportation systems are not substance-impaired. This right surely transcends important constitutional and personal objections to compulsory testing. The privilege of being an operator of a transportation system carries with it special obligations, and such persons can reasonably be held to a high standard of performance. Just as employees have a right to a safe workplace, enforced by OSHA, employers should have the right and the obligation to determine employees' fitness for service in the workplace.

5. **Safety Devices and Procedures.** Regulatory agencies should have the authority to require, and should require, interstate transportation companies to install modern safety devices and procedures as they are developed and become feasible. Simple existing devices such as working radios and automatic derailing systems should not be ignored in favor of flashy new high-tech devices. Merely installing safety devices is not enough, of course: these devices must be in working order and must be operated by alert and responsible employees. Pre-dispatch working condition of all critical safety systems should be attested in writing by both operating and maintenance personnel, subject to criminal penalties for failure to do so or falsification of records. Management should be **required** to make periodic and random checks of equipment in service. Regulatory agencies should be **empowered and required** to make periodic and random checks of employees, management supervision, and equipment at time of dispatch.

> Regulatory agencies, often under the apparent influence of the industries they regulate, have not always established a historical record for requiring use of proven safety technologies or for fostering development of new safety technology. Because safety devices and procedures usually cost money and do not usually improve productivity, transportation companies have natural incentives to resist installation of safety devices and implementation of safety procedures. This makes safety regulation a natural government interest, but the public cannot understand why our regulators are so slow to study and make rules and so hesitant to seek new legislative mandates for improved regulation as technology and knowledge improve. As a creative way to encourage development of new safety devices and procedures, regulatory agencies could sponsor an annual inventor's competition with a cash prize.

6. **Responsibilities of Management and Labor.** Management responsibility to implement and enforce safety rules and procedures and report reportable events, and employee responsibility to observe safety rules and procedures and report reportable events, should be emphasized with personal criminal liability.

> Fines imposed only on companies and only after long and costly administrative hearings are simply not an effective deterrent to managerial nonfeasance or misfeasance, or to employee misconduct. They are paid by the customer or subsidy-giver in the end, not by the manager or the employee. Who will care, take notice, or be deterred from future violations if Conrail has to pay a $500 fine for allowing warning whistles to remain taped over, a condition that must have been (or should have been) known to

> both maintenance employees and first-line supervision? Will it make the managers of Amtrak any more vigilant in preventing dangerous excessive or unauthorized speeds by their passenger trains if the Federal Railroad Administration (a government agency) eventually fines Amtrak (another government agency) for the actions of their engineer in the January 4 crash? The effectiveness of personal criminal liability is now well-recognized in antitrust law. Is the safety of the travelling public any less important than preventing price-fixing? If managers and employees face personal criminal liability in the safety area, rigorous enforcement and observance of safety rules and procedures may be expected to become a high priority for both. The public cannot understand why it is not now a crime to disable a railroad safety device, operate a train while using drugs, or negligently fail to supervise people who do these things.

Apparently the only federal criminal penalties for substance abuse by interstate transportation operators are in the Federal Anti-Drug Abuse Act of 1986, Subtitle T, Chapter 17a, which provides for a prison sentence of up to 5 years or a $10,000 fine or both for operating a common carrier while under the influence of alcohol or drugs. It provides that a blood alcohol level of at least .10 is presumptive evidence of "under the influence", but sets no similar quantitative standard for drugs (it refers to detection of levels sufficient to impair and thereby invites a court battle of expert opinions in any prosecution under this statute). This new law should be strengthened to provide that any illegal drug levels in blood or urine above trace amounts shall be presumptive evidence of impairment. Many drugs have long-lasting effects on judgement and perception, and there should be no place in the public transportation cab or cockpit for anyone who uses illegal drugs at any time in any quantity.

Nothing in these six areas is expensive or exotic, and action could be taken to implement all of them in 1987.

It is neither possible nor desirable to have a federal inspector in the cab of every interstate vehicle, but in a free society it is possible to put in place self-activating mechanisms and incentives, followed by criminal penalties when necessary, that will encourage adherence to the best available standards of public safety in the transportation industry.

ATTACHMENT I

SAMPLE DATA ELEMENTS IN THE RECORD OF A LICENSE HOLDER

Non-Public Data Elements

Name
Social security number
License number
Month and day of birth
Address
Home telephone number
Work telephone number
Name, address, and telephone number of personal physician
Name, address, and telephone number of personal dentist
Fingerprints

Public Data Elements

Permanent code number (linked to license number in separate confidential file)
Position classification code (engineer, pilot, brakeman, barge operator, etc. per separate public file)
Employer identification code (linked to company name in separate public file)
Year of birth
List of minimum qualifications for the operating position, as established by the employer or regulatory body, dates the license holder met each qualification, scores if applicable
Additional courses or tests passed beyond the minimum qualifications, with dates and scores
One record for each routine or special medical exam and hospitalization, as required by the employer or regulatory agency, containing selected data elements appropriate to the operating position, such as blood pressure, pulse rate, reaction to stress test, EKG findings, EEG findings, blood chemistry, levels of specific substances, vision test, hearing test, etc., as well as a limited amount of text for evaluation and recommendations.
One record for each reportable event, including arrest on any criminal charge, citation for any automobile traffic violation, suspension of automobile license, safety violations on the job, accidents on the job, disciplinary action on the job, substance abuse, and similar pertinent events, as well as a limited amount of text to be provided at the option of the license holder. Disposition of any reportable event (such as conviction or acquittal subsequent to an arrest, successful completion of a substance abuse treatment program, return to regular status following disciplinary action, etc.) is also a reportable event.

1/ Attachment II was not reproducible.

R.D. 1, Box 167D
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(717)423-6786
March 14, 1987

The Honorable Ernest F. Hollings
United States Senate
Washington, D.C. 20510

Dear Senator Hollings:

On January 4, 1987 in Chase, Maryland, our son, Thomas C. Colley, eighteen years old, died in the AMTRAK/CONRAIL accident along with fifteen other people. Like TC, many of the victims were children.

We write to you to encourage you to join your colleagues in the Senate to legislate changes in the American rail system in order to prevent catastrophies of this kind from happening again.

We are aware that the Subcommittee on Surface Transportation of the Senate Commerce Committee conducted hearings on February 17, 1987, and, the Senate Committee on Commerce, Science, and Transportation held hearings on February 20, 1987.

Members of the Subcommittee on Surface Transportation took strong and laudable positions on many of the critical issues. These include mandatory random testing for drugs and alcohol, installation and use of a variety of safety devices, penalties for deliberate disabling of warning equipment, changes in scheduling and routing in order to separate freight from passenger vehicles, and strengthening of the authority of the National Railway Administration. We urge vigorous efforts so that when legislation is considered it will not contain language diluted by the persistent lobbying of various organizations purporting to represent the views of the operating staffs.

It was extremely disturbing to learn that the authority of the National Railway Administration is severely limited in dealing with penalties for railroad companies. In fact, it appears that the N.R.A. has no authority to act against an individual found guilty of tampering with safety equipment to make it inoperable.

Both Mr. Riley, of the NRA, and Mr. Burnett, Chairman of NTSB, made encouraging statements concerning desirable corrective actions, but these will be achieved only with changes in legislation. Mr. Burnett's testimony about the absence of operable two-way communications, and the unsafe interiors of baggage and passenger cars is very disturbing. Clearly, it should not be difficult to correct these deficiencies.

During the February 20, 1987 Senate Committee on Commerce, Science, and Transportation hearings there was apparent strong bipartisan support for strenghtening legislation with respect to drug and alcohol testing. The convictions that members of the Committee expressed that public safety requires early congressional action in spite of the determined resistance of some of the witnesses and the organizations they represent, were encouraging. We hope that you, the Secretary of Transportation, and others concerned will see that good new legislation will be enacted quickly.

In contrast to the Committee members, the testimony of the members of the panels was appalling. For the parents of a lost child to hear that the witnesses bragged about how "clean" their industry is, what marvelous safety records they have, how their problem is minuscule, is nothing short of disgusting and nauseating. Have they no sensitivity to, or awareness of, the fact that no matter how clean their members are, innocent members of the public are being killed?

Incidentally, the January 4th crash was the second train wreck our son was in. The first occurred in August of 1985 when the train in which he was riding struck a truck which was blocking the track in Mansfield, Ohio.

We are grateful for the persistence of some of the Committee members, in particular Senators Danforth, Exon and Breaux, in their unwillingness to permit the witnesses to hide behind "constitutional rights" and "intrusion of privacy" when defending their extraordinary resistance to mandatory random testing. The witnesses claim to support testing, but their substitutes for mandatory random testing are simply unacceptable. For example, testing at scheduled times, such as regular physical examinations, would be useless because the employee will simply plan for the necessary period of abstinence. Also, testing for dexterity, or when there is probable cause, has been proven not to work. Witness the AMTRAK/CONRAIL accident, when the CONRAIL crew was observed by a representative of management for fifteen minutes just before departure, and the crash occurred an hour and fifteen minutes later. In post accident testing, both crew members tested positive for marijuana.

No matter how small a percentage of transportation workers may be users, the rights of the public to safe transportation operated by clean crews are far more important than the intrusion on privacy alleged by these witnesses. The lives of people are placed in the hands of those employees. If they cannot tolerate random, infrequent testing to increase safety for themselves, their colleagues, and the traveling public, let them find other employment. A well managed testing program, truly random by computer selection, may not eliminate all accidents due to drugs or alcohol, but will certainly act as a strong deterrent for users among transportation workers.

We appeal to you as a parent. Our son, like your children, was full of potential. He had just completed his first semester at The Rhode Island School of Design. His future was as likely to be productive and beautiful as that of any of this nation's best. TC was our only child. Please, Senator, protect your children and all the others who must trust the judgment, integrity, and wisdom of our generation.

Most sincerely,

Tom + Susan Colley

Thomas and Susan Colley